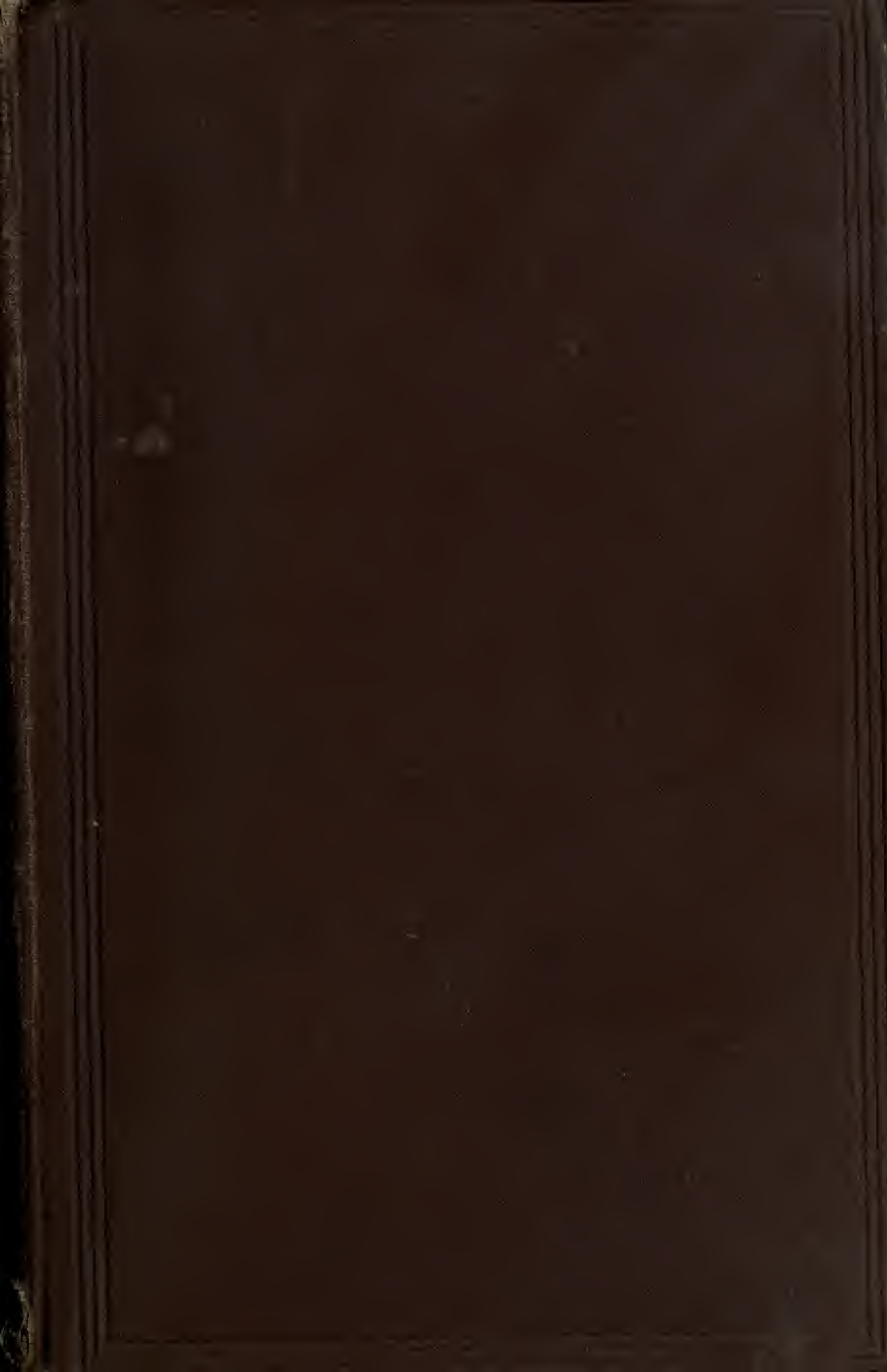






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ANECDOTES
OF
THE CONNAUGHT CIRCUIT.



ANECDOTES
OF
THE CONNAUGHT CIRCUIT.

FROM ITS FOUNDATION IN 1604 TO CLOSE UPON
THE PRESENT TIME.

BY

OLIVER J. BURKE, A.B., T.C.D.

Knight of the Order of St. Gregory the Great,

BARRISTER-AT-LAW,

MEMBER OF THE CONNAUGHT BAR SOCIETY,

AUTHOR OF 'THE HISTORY OF ROSS ABBEY,' 'HISTORY OF THE LORD CHANCELLORS
OF IRELAND,' 'HISTORY OF THE ARCHBISHOPS OF TUAM.'

*“οἱ δὲ γέροντες
Εἶατ' ἐπὶ ξεστοῖσι λίθοις, ἱερῶ ἐνὶ κύκλῳ.”*

On seats of stone within the sacred place
The reverend elders nodded o'er the case.

ILIAD, Book xviii. 503.

DUBLIN:
HODGES, FIGGIS, AND CO., GRAFTON STREET,

PUBLISHERS TO THE UNIVERSITY.

1885.



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12.8.55

TO
JAMES ROBINSON, ESQ., Q.C.,

First Sergeant-at-Law.

DEAR SERGEANT ROBINSON,

Now that I have written the last line of the "CONNAUGHT CIRCUIT," it is but natural that I should wish to present it to the public with the sanction of a name which will be certain to procure for it a fair trial on its merits. And whose name could I desire in preference to the name of one who not alone as a leader on the Connaught Circuit has helped to maintain its proud traditions, but who, as 'First Sergeant-at-Law,' stands in the foremost rank of the Bar? It is not fitting that I should speak here of the qualities that have won for you that position—of your urbanity as a gentleman, of your abilities as an advocate, of your learning as a lawyer, of your wisdom as a judge; but I will speak of your kindness as a friend. That kindness has procured for me the permission, for which I thank you, to dedicate, as I now do, my book to you.

Believe me to be always,

Yours sincerely,

OLIVER J. BURKE.

OWER, HEADFORD,
CO. GALWAY.

15th June, 1885.

In Memoriam.

THIS Work, which would have been out of the printer's hands at the close of the first week of the present month, was delayed in its publication by the sudden death of my learned and lamented friend, SERGEANT ROBINSON. His name frequently occurred in the last chapters as the name of one yet living amongst us, and it seemed at first, therefore, necessary to recast several pages of the book; but my able publishers have suggested the interleaving of what I now write. This seems the preferable course.

I did dedicate this Work to him while he was yet living, as being my friend; I now sadly dedicate it to his memory! Honour to his name!

OLIVER J. BURKE.

25 MOREHAMPTON ROAD, DUBLIN,
20th July, 1885.

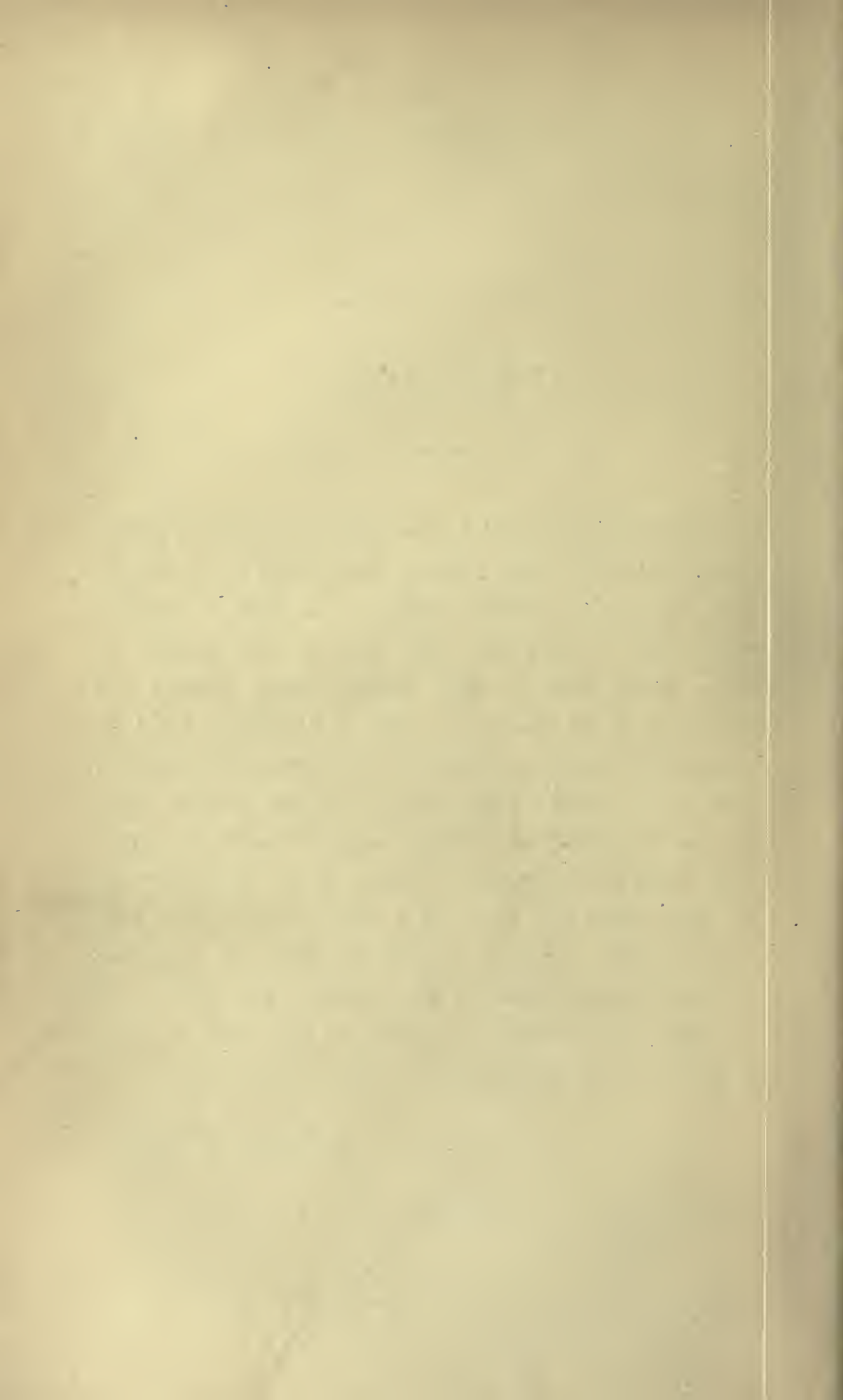
P R E F A C E .

THE title originally intended for this book was "History of the Connaught Circuit." That title has been altered to "Anecdotes of the Connaught Circuit," because if it were a complete history, many a family must have had the pain inflicted on them of seeing much of their private history brought out from the gloom of the past. Such a "History" would be an intolerable outrage on society. My "Anecdotes," therefore, do not come, with few exceptions, to the near present. For this cause the celebrated "Galway Election Petition of 1872," though fresh in the minds of many, is not given, nor are other trials which may well find a place in some future History of the Bar. I have selected the following from the many cases through which I have waded. The lawyers of the Circuit have left their foot-prints on the sands of time, and their memoirs I intersperse in the following pages.

OLIVER J. BURKE.

OWER, HEADFORD, COUNTY GALWAY,

15th June, 1885.



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NAMES OF THE CONNAUGHT CIRCUIT BARRISTERS,

As far as can be ascertained from 1604 to the Present Time.



A.

- Andrews, Charles, Q.C., now on the Circuit, Father of the Connaught Bar, Crown
Prosecutor, Co. Sligo.
Armstrong, John, 1829-39.
Armstrong, William, Q.C., 1821-63, Chairman of the Co. Londonderry.

B.

- Baker, Mathew, Q.C., 1830-51.
Baker, Robert, K.C., 1801-37.
Bagot, Bernard W., 1846-58, of the Ballymoe family, Co. Galway.
Baldwin, Henry, Q.C., 1827-50, Judge of the Insolvent Court.
Ball, Nicholas, 1816-29, Justice of the Common Pleas.
Barker, Henry Oliver, LL.D., 1867-70, of the Stirling family, Co. Meath.
Beytagh, —, 1831-36.
Beytagh, Edward French, Q.C., now on the Circuit, of Cappagh, Co. Galway.
Bird, William Seymour, now on the Circuit, Crown Prosecutor for the Co. Ros-
common and Co. Town of Galway.
Black, William, 1843-45.
Blake, Isidore, 1837-53, of the Tower Hill family, Co. Mayo.
Blake, James Henry, Q.C., 1827-41.
Blake, Sir John, Bart., 1784, of Menlough Castle, Galway.
Blake, John Oge, *cir.* 1630-41.
Blake, John, 1837-43.
Blake, John, 1820-32.
Blake, John Hubert, 1843-75, of the Holly Park family, Co. Galway.
Blake, Oliver, 1720.
Blake, Patrick J., Q.C., 1838-72, Chairman of Co. Fermanagh.
Blake, Pat, 1775.

- Blake, Robert, 1801-6.
 Blake, Thomas, 1875-79, of the Tower Hill family, Co. Mayo.
 Blakeney, Charles, 1836-58, Judge, Queensland.
 Blakeney, Robert, K.C., 1799-1839.
 Blossett, J., K.C., 1770-93, Father of the Connaught Bar.
 Bodkin, John, 1727.
 Bodkin, —, 1801-4.
 Bodkin, Ambrose, 1777.
 Bodkin, Martin, 1835-37, of the Annaigh family, Co. Galway.
 Bodkin, Mathew M'Donnell, now on the Circuit, Professor of Law, University College, Stephen's Green, Dublin.
 Bodkin, John, 1730-60, of Carrowbeg, Tuam.
 Bourne, John, 1870-79.
 Boyd, Abraham, K.C., 1797-1813.
 Bourke, Oliver, 1740.
 Bourke, Walter, Q.C., 1828-68, of Carrokeel, County Mayo, J.P.
 Bourke, Walter M., 1862-64, murdered.
 Browne, A., *Prime Sergeant*, 1790-1805.
 Browne, Dodwell Francis, LL.B., 1868-73, Advocate, Supreme Court, Ceylon, Colombo, of Rahins, Co. Mayo.
 Browne, Geoffrey, 1634, Envoy of the Confederate Catholics to Queen Henrietta in 1647, and to the Duke of Lorraine in 1650.
 Browne, John, of Westport, 1680.
 Browne, George J., 1790-1805.
 Browne, George, 1830-48.
 Browne, Henry, 1852-53.
 Browne, Henry Augustus, 1834-46, of the Browne Hall family, Co. Mayo.
 Browne, Hon. James, Sergeant, 1770.
 Browne, Montague, County Mayo, 1824-32.
 Browne, Peter, 1700.
 Buchannan, Robert, J.P., 1845-84.
 Burke, Dominick, M.P., 1740-1750, Recorder of Galway.
 Burke, Charles Granby, 1839-51, Master of the Court of Common Pleas, of the Marble Hill family, Co. Galway.
 Burke, Francis, 1810-44, of the Ower family, Co. Galway.
 Burke, Henry O'Neil, now on the Circuit, Crown Prosecutor for the County Sligo, of the Holywell family, Co. Mayo.
 Burke, Martin Joseph, 1838-44.
 Burke, Oliver, 1710.
 Burke, Oliver J., now on the Circuit, author of these pages, of the Ower family, Co. Galway.
 Burke, William, 1844-52, of the Ballydugan family, Co. Galway.
 Burke, William Joseph, 1849-57, J.P., of Ower, County Galway.
 Burke, William M., 1810-14, J.P., of Ballydugan, County Galway.
 Butler, Sir Toby, Solicitor-General, 1688 [buried in Crusheen Catholic Churchyard, Co. Clare].
 Butler, Walter R., 1846-67, of Cregg Castle, County Galway.

C.

- Carey, Henry, 1836-37.
Carleton, John William, Q.C., 1840-77.
Cavendish, R., 1842-51, of the Devonshire family.
Casserly, James, 1833-52.
Caulfield, St. George, 1748, Chief Justice, K.B., of Donamon, Co. Roscommon.
Caulfield, William, 1700, Justice of the King's Bench, of Donamon.
Clancy, ———, 1803-40.
Clarke, ———, 1811-24.
Clarke, ———, *cir.* 1630.
Close, James, Q.C., 1837-51.
Cogan, Patrick O., 1840-55.
Concannon, Henry, LL.D., Q.C., 1840-69.
Concannon, Mathew, *cir.* 1730, Attorney-General for Jamaica.
Coneys, Thomas, 1798-1819, of Headford, Co. Galway.
Coneys, John, 1804-6, of Headford, Co. Galway.
Conmee, ———, 1797-1806.
Conmee, Mathew, 1845-53.
Connolly, Mathew, 1830-41.
Costello, Edward, 1841-76, Crown Prosecutor, Co. Mayo.
Costello, John, 1815-26.
Courtenay, David Rutledge, 1812-51.
Crampton, George R., 1850-72.
Crampton, Philip, 1811-30, Justice of the Queen's Bench.
Crawford, George, 1844-50, Australia, Judge.
Crofton, ———, 1841-48.
Crofton, Sir Oliver, 1745.
Crofton, Charles, 1827-28.
Crofton, Laurence Harman, 1828-31.

D.

- D'Alton, John, M.R.I.A., 1815-28.
Daly, Denis, 1680, Justice of the Common Pleas.
Daly, Denis, 1775.
Daly, M., 1810-15.
Daly, Peter, *cir.* 1688.
Daly, St. George, 1780-92, Justice of the King's Bench, of the Dunsandle family.
Daniel, George Robert, K.C., 1797-1836, of Auburn, Co. Westmeath.
Daniel, Henry, 1832-34.
Darcy, Dominick, 1843-51, of the Welfort family, Co. Galway.
Darcy, James, 1798.
Darcy, John, 1780-1790, of the New Forest family, Co. Galway.
Darcy, John, 1797-1804, of Hounswood, Co. Mayo.
Darcy, ———, 1839-44, of Clifden, Co. Galway.
Darcy, Patrick, 1627-68, Chancellor of Confederation of Kilkenny.

Darling, ———, 1839-44.
 Davis, Thomas, 1839-48.
 Digby, J. G., K.C., 1790-1810.
 Digby, Robert, 1797-1815.
 Dillon, Gerard, *cir.* 1634.
 Dillon, Sir Gerald, 1690, Recorder of Dublin.
 Dillon, John Blake, M.P., 1843-64.
 Dillon, ———, 1630.
 Dillon, Lucas, *cir.* 1637.
 Dillon, Luke P., now on the Circuit, Crown Prosecutor for the Co. Roscommon.
 Dillon, Robert, *cir.* 1624.
 Dillon, Thomas, 1606.
 Dolphin, H. F., 1797-1826.
 Dolphin, Oliver, 1836-80, of Turoe, Co. Galway, J.P.
 Donelan, ———, 1793-1801, of Ballydonelan, Co. Galway.
 Donelan, Sir James, 1620, of St. Peter's Well, Co. Galway, Chief Justice of the
 Common Pleas, Father of.
 Donelan, Loughlin, *cir.* 1660, of St. Peter's Well, Father of.
 Donelan, Nehemiah, 1630, Chief Baron of the Exchequer, of St. Peter's Well.
 Duggan, William, 1843-64.
 Duke, Robert, 1824-29.
 Dunne, Richard, 1828-39.
 Duquerry, Sergeant, 1770.

E.

Eccles, Hugh, 1836-48.
 Ellis, W. H., 1811-44, Crown Prosecutor for Province of Connaught.
 Ellis, W., 1637.
 Everard, Richard, 1810-34.
 Eyre, Edward, 1727.

F.

Fallon, John, 1862-68, now of Runnimead, Co. Roscommon.
 Fallon, Malachy, 1827-38, Assistant Barrister, Co. Limerick.
 Farrell, Edward, 1856-57.
 Fenton, Abraham Boyd, 1840-52, Queen's Advocate, the Gambia.
 Ferguson, William Dwyer, 1839-51, Registrar, Court of Chancery.
 Finn, Robert N., 1837-45.
 Fitzgerald, Francis, 1835-69, Baron of the Exchequer.
 FitzGibbon, Gerald, Q.C., 1836-57, Master in Chancery.
 Fitzjames, James, *cir.* 1750.
 Fitzpatrick, Patrick, 1839-60.
 Fox, Luke, 1800-4, Justice of the Common Pleas.
 Fox, Peter, 1797-1811.
 Frazer, ———, 1833-41.

French, Arthur, 1827-35.

French, George, Q.C., 1797-1851, Father of the Connaught Bar, of the De Freyne family.

French, Robert, 1740, Justice of the Common Pleas, 1745.

French, Robert, 1845-52.

French, ———, 1766.

G.

Galbraith, James, 1848-55, of the Cappard family, Co. Galway.

Garvey, Francis, 1840-60, of the Morysk family, Co. Mayo.

Geoghegan, Richard, 1798-1810, of Bunnowen Castle, Co. Galway, J.P.

Gibbs, George, 1831-31.

Gildea, Anthony Knox, J.P., D.L., Clooncormack, Co. Mayo, 1841-50.

Golding, Hyacinth, 1855-82.

Gorges, Hamilton, 1841-48.

Grayden, Alexander, 1841-48.

Guthrie, John, 1797-1836.

H.

Handcock, William, 1680, Recorder of Galway.

Hillas, Robert W., 1797-1814.

Harkan, John, 1842-70.

Henn, Jonathan, Q.C., 1813-19, Chairman, Co. Donegal.

Hilton, William, 1630, Attorney-General for Province of Connaught.

Hodgens, Albert, 1865-73.

Holmes, John Galway, 1834-61.

I.

Ireland, Richard, 1839-49.

Ireland, Samuel, 1840-61.

Irwin, George O'Maley, 1826-33.

J.

Jennings, J. W., 1824-36.

Jennings, Thomas, 1832-41, of Ironpool, County Galway.

Johnstone, Robert, 1798-1802, Justice of the Common Pleas.

Jones, James Campbell, 1845.

Jones, Gore, 1845-59.

Jordan, Edmund, 1846-80, of the Rosslevin Castle family, Co. Mayo.

Jordan, James, 1760-86, of Rosslevin Castle (killed in a duel, 1786, by Col. Martin).

Joyce, John, now on the Circuit, of the Merview family, Co. Galway.

Jurdan, Edmund, 1634, of Rosslevin.

K.

Keatinge, John, 1660, Chief Justice of the Common Pleas, 1679-89.

Keatinge, Richard, 1814-40, Judge of the Court of Probate.

- Kelly, ———, 1820-49.
 Kelly, Charles, Q.C., 1840-79, of Newtown, Co. Galway, County Court Judge, Clare.
 Kelly, Denis, 1797-98, of Castlekelly, Co. Galway.
 Kelly, Thomas, *cir.* 1775, Justice of the Common Pleas.
 Kelly, George A., now on the Circuit.
 Keogh, William, 1841-51, Justice of the Common Pleas.
 Keogh, William, 1872-79.
 Keon, M., 1806-13.
 Kirwan, James, K.C., 1790-1802, of the Castle Hacket family, Co. Galway.
 Kirwan, John, K.C., 1793-1819, of the Dalgan Park family, Co. Mayo.
 Kirwan, John Andrew, D.L., of Hillsbrook, Co. Galway, brother of.
 Kirwan, Miles, 1838-40.
 Knox, ———, 1814-29.
 Knox, Francis, 1798-1802.
 Kurwaun, J., 1620.

L.

- Lea, John, 1800-6, Secretary of the Connaught Bar Society.
 Lefroy, Thomas, Q.C., 1834-57, Benchers of the King's Inns, County Court Judge, Down, Chancellor of the Diocesan Court of Down, Connor, and Dromore.
 Lloyd, Bartholomew, Q.C., 1832-63.
 Lloyd, Richard P., 1833-84, sometime Father of the Bar, unanimously elected a life-member of the Society.
 Lopdell, John, 1820-25, of Raheen Park, Co. Galway.
 Lynch, John F., 1834-53.
 Lynch, Martin F., 1793-1826.
 Lynch, Thomas FitzIsidore, 1630.
 Lynch, Thomas FitzMarcus, 1630-41, Recorder of Galway.
 Lynch, Sir Henry, 1670, Bart., Baron of Exchequer, 1687.
 Lynch, Walter J., 1841-49.
 Lyster, Mathew, 1745.

M.

- MacCarthy, B., 1799-1800.
 Macan, John, K.C., 1816-34, Commissioner of the Court of Bankruptcy.
 Mahon, James, 1839-44.
 Mahon, James, 1798-1840.
 MacCausland, Sir Richard, 1840-54, Knight, ex-Recorder of Singapore.
 MacCullagh, William Torrens, 1838-38, LL.B., in 1863 (assumed the name Torrens) M.P., author of "Lectures on the Study of History," "Industrial History of Free Nations," now of the English Bar.
 MacDermot, ———, 1797-99.
 MacDermot, George, 1872-81.
 MacDermot, The, Prince of Coolavin, Q.C., Co. Sligo, ex-Solicitor-General for Ireland.
 McDermot, Roe, 1841-41.

- McDermot, Oge, 1637.
 McDermot, William, 1831-45, Chairman of the Co. Kerry.
 MacDonnell, ———, 1810-10.
 MacDonnell, Edward, 1843-53.
 MacDonnell, J., 1797-1821.
 Maguire, Edward, 1853-59, High Sheriff of the Co. Leitrim, 1858.
 MacNevin, Thomas, 1839-42.
 MacTernan, Hugh, D.L., R.M., 1869-71.
 Malley, George Orme, Q.C., now on the Circuit, Crown Prosecutor for the Counties of Leitrim, Sligo, and Mayo.
 Marees, ———, 1687.
 Martin, James, 1830-37.
 Martyn, Andrew, 1828-35.
 Martyn, M. J., 1845-45.
 Martin, Richard, 1688.
 Martin, Richard, 1780-93, M.P., of Ballinahinch, Colonel of the Galway Volunteers.
 Martyn, Peter, 1660-87, Justice of Common Pleas.
 Millar, J. B., 1813-44.
 Molloy, ———, 1840-48.
 Monahan, James Henry, C.J., 1829-47.
 Monahan, James Henry, Q.C., now on the Circuit.
 Monck, W. Stanley, now on the Circuit.
 Moore, Edmund J., 1841-46.
 Moore, George P., 1797-1820.
 Moore, George P., 1813-13.
 Moore, George, 1813-13.
 Moore, John Hubert, 1798-1821.
 Morris, Michael, Chief Justice of the Common Pleas, of Spiddal, Co. Galway, 1850-63.

N.

- Nash, George, 1875-79.
 Nolan, Edward, 1815-39.
 Nolan, Francis, Q.C., now on the Circuit, Crown Prosecutor, Co. Galway, of the Ballinderry family.
 Nolan, James, 1867-74, of Ballymacurly, Co. Roscommon.
 Nolan, John, J.P., 1837-45, of Ballinderry, Co. Galway.
 Norris, Thomas, 1837-39.
 North, John, Q.C., M.P., Judge of the Court of Admiralty, 1813-30.

O.

- O'Bierne, G. H., 1804-6.
 O'Carroll, Redmund, 1837-46.
 O'Connor, ———, 1839-39.
 O'Connor, Charles, 1880-83.

- O'Connor, Denis, 1834-41.
 O'Connor, Henry, 1838-38.
 O'Connor, Mathew, 1822-40, of Mount Druid, Co. Roscommon, J.P.
 O'Connor, Roderick, 1820-49, of Milltown, Co. Roscommon, J.P.
 O'Donel, Charles Joseph, 1846-69, Chief Magistrate of Dublin Metropolitan Police.
 O'Dowd, James, 1833-48, Solicitor to the Customs.
 O'Fallon, James, 1810-41, Assistant Barrister, Co. Limerick.
 O'Flahertie, Roderick, *cir.* 1640.*
 O'Flaherty, Christopher P., now on the Circuit, Crown Prosecutor for the Counties of Galway, Mayo, and Town of Galway.
 O'Garra, Captain, 1620.
 O'Hara, William, 1782.
 O'Hara, James, 1772, Recorder of Galway for 60 years.
 O'Hara, Robert Patrick, 1861-68.
 O'Hara, Robert Francis, now on the Circuit.
 O'Hara, William, 1832-39, Recorder of Galway.
 O'Kelly, Hymayne, *cir.* 1640.
 O'Leary, John O'Connell, 1861-64, Judge of Bombay Presidency, *deceased*.
 O'Malley, Charles, 1824-40.
 O'Malley, Charles, now on the Circuit.
 O'Malley, Henry, 1846-51.
 O'Moore, Edmund, 1850-50.
 Ormsby, ———, 1797-98.
 Ormsby, Robert I., 1620.

P.

- Patterson ———, 1780.
 Persse, Richard D., 1859-79, Recorder of Galway, *deceased*, of the Roxborough family, Co. Galway.
 Phibbs, Owen, 1844-53.
 Phillips, Charles, 1812.
 Pigot, David R., 1848-57, now Master of the Court of Exchequer.
 Plunket, John H., 1826-32, Solicitor-General of New South Wales.
 Plunket, William, 1801-4.
 Powel, Eyre, 1841-45.

R.

- Ramsay, ———, 1833-39.
 Rickard, R., 1630.

* During the wars that desolated the Province of Connaught between the O'Flaherties and the Burkes in the fourteenth and fifteenth centuries, the town of Galway suffered so much that the following devout prayer, cut on a stone tablet, was set over the west gate of the town—"From the ferocious O'Flaherties, good Lord, deliver us." And as to the O'Flaherties or O'Flahertys and the MacWilliam Burkes it was wisely enacted that "nayther O nor Mac should nayther strutt nor swagger through ye streets of Galway."

Robinson, James, First Sergeant, now on the Circuit.
 Roper, ———, 1798-99.
 Roper, William, 1849-1875, *deceased*.
 Rorke, ———, 1843-44.
 Rorke, Lawrence, 1835-38.
 Rutledge, David Watson, 1837-52, J.P., High Sheriff, 1851, late Captain, South Mayo Rifles.
 Ryan, ———, 1836-40.

S.

Saint Leger, Sir J., 1720, Baron of the Exchequer.
 Scott, Edward, K.C., 1810.
 Seymour, Thomas, 1820-34, J.P., of Ballymore Castle, Lieutenant-Colonel of the Galway Militia, High Sheriff of the King's County, 1859.
 Shanley, ———, 1806-10.
 Shaw, Robert, 1740.
 Shone, J. Allan, 1840-59.
 Sidney, William J., Q.C., 1850-66.
 Skelton, Walter Butler, 1836-48.
 Smith, William, 1791-1810.
 Stanley, Edmund, 1780-99, Prime Sergeant.
 Staunton, James, *cir.* 1720.
 Staunton, John, M.P., *cir.* 1700.
 Staunton, John, 1728.
 Staunton, John, 1748.
 Staunton, John, 1772.
 Staunton, Thomas, *cir.* 1740.
 Stritch, A. R., 1840-59.
 Stritch, John R., now on the Circuit.

T.

Taylor, John F., now on the Circuit.
 Todd, Charles H., 1840-70, LL.D., Q.C., Chancellor of the United Diocesan Court of Derry and Raphoe.
 Trench, Frederick Le Poer, now on the Circuit, of the Clancarty family, Crown Prosecutor for the Counties of Galway, Leitrim, and Roscommon.
 Treston, Lucas A., R.M., 1849-63.

V.

Vandeleur, Thomas Burton, 1790-1822, Justice of the King's Bench, of the Kilrush family, Clare.

W.

Walker, F. Chambers, K.C., 1830-52.
 Walker, W., 1839-40.

Walsh, Richard Hussey, 1856-57, first Roman Catholic Professor of Political Economy, Trinity College, Dublin, "promoted to a Government Office in the Island of the Mauritius." [Bar Book MS., p. 271.]

Walsh, Thomas, 1837-47.

Webber, Charles T., 1830-52.

Webber, Daniel, 1798-1815, M.P. for Armagh.

West, John Beatty, K.C., M.P., 1816-35.

West, Henry, Q.C., 1835-79, Chairman of the Co. Wexford.

White, Thomas Warren, 1839-75, appointed permanent Steward of the Bar on Circuit, 17th June, 1843. [Connaught Bar Book MSS.]

Whiteside, James, 1832-34, Chief Justice of the Queen's Bench.

Whitestone, ———, K.C., 1798-1831, father of the Bar.

Williams, J., K.C., 1797-1805, father of the Bar.

Woodroffe, William, 1849-55.

Workman, John Harlowe, 1841-48.

Wynne, James, 1829-34, of the Hazlewood family, Co. Sligo.

THE CONNAUGHT CIRCUIT.

CHAPTER I.

YEARS have elapsed since the writer of these pages devoted a summer vacation to the writing of the History of that Circuit to which he belongs, and to which he owes so many happy memories. It was amid the noise and din of the Assizes, that the questions occurred to him—When were those Assizes first established, who established them, and what were the causes that led to their establishment? Were there from the beginning trials of interest on this circuit, and was that interest of a religious, a political, or a romantic nature? Who were the judges that presided at those trials, and who the lawyers that were engaged on either side? Did those lawyers forget their clients' interest when the influences of place and power were arrayed against them, or did they by their learning in the law protect the oppressed from the oppressions of the oppressor? When had the Connaught Bar Society a place for the first time on the Connaught Circuit, and who were they whose names are inscribed on its roll? These and other questions of interest connected with the circuit have been the subject of much careful research on the part of the writer amongst the records of our country. The results of his inquiries are contained in the following pages.

The Crown of England, from the conquest by Henry II., until the middle of the reign of Edward III., exercised, as appears from the records of our courts, a wide jurisdiction in this country. And the records are not bad criterions of the extent of English law and

power at different epochs in Ireland. During the reigns of Henry III., Edward I., Edward II., and Edward III., the plea rolls are large and well written. Plea follows plea in all the regularity of form and precedent. Cases were heard in Chancery before the Lord Chancellor; writs were issued, and mandamuses granted in the King's Bench on the application of suitors. The only case that we shall notice, illustrative of this proposition, is that of *The Prior and Friars of St. Dominic v. The Archbishop of Tuam, Archdeacon Bland, and others*, A.D. 1298. The question at issue was conversant with the visitorial powers of the Archbishop of Tuam, from which the plaintiffs claimed exemption. The Dominican Friars had been summoned to attend a Visitation, which the Archdeacon, acting for the Archbishop, held at Athenry. They did attend, but under a protest, delivered in loud and unmeasured language; and they abused the Archdeacon so grossly that he excommunicated them. Now, an excommunication in those, as in more modern times, was attended with serious consequences. The excommunicated were not admitted into the body of the church; their place was in an ante-chamber, called the Galilee; and forty days after the writ of excommunication was filed in the Court of Chancery, the Lord Chancellor was empowered to issue a writ *de excommunicato capiendo* for the caption of the excommunicated. Under this writ they might have been arrested, and committed for an indefinite time to prison. Not satisfied with the excommunication which had been fulminated by the Archdeacon, the Archbishop issued a proclamation, whereby he forbade all Christians from entering their church, and from supplying them with either food or alms. The friars, on the 11th of February, 1298, applied to the Lord Chancellor for a *mandamus*, which was granted, directing the Archbishop "that, *instantly* and without any manner of delay whatsoever, he recal his proclamation and inhibition, and further that he abstain from doing such grievances in times hereafter to come." To this gentle advertisement the Archbishop made return—"That he never at any time gave offence to the friars, but on the contrary it was always his interest and purpose to defend and favour them in charity and love, if their own demerits did not stand in their way; and, if he had done any injury to the said reverend community by his said

proclamation and inhibition, he would, with all speed, cause the same to be revoked, and as to the Archdeacon, he would cause him to undo whatever he had unduly done, and would inhibit him for the future from repeating the grievances complained of." To this return the plaintiffs, by their lecturer, Adam de Large, and the king's attorney-general, John de Ponte, replied that the said Archbishop had made and published said proclamation and inhibition, that the plaintiffs had applied to him for a remedy, and he refused them, and upon this replication they offered to join issue. Upon this the Archbishop gave security that he would compel the Archdeacon to recal all that had been done; and if he did not do so, he granted that the Sheriff of Connaught might distrain him (the Archbishop) until the same were done, and so ended this branch of this once memorable case. But the friars next proceeded, in the King's Bench, against the Archdeacon, and damages were laid at £1,000. His plea was one of justification, upon which issue was joined, and the case set down for trial; but when it was called on, the defendant did not appear.

A precept then issued to the Sheriff of Connaught, commanding him to distrain the Archdeacon, by his lands and goods, and to have his body before the Chief Justice on the Quindecem of Easter next following. What was further done in the matter does not appear. We can, however, thereby discern that the English laws were then accepted and in force in the countries west of the Shannon.

The Superior Courts of Law were, in 1300, held at Collet's Inn, outside the walls of the City of Dublin, on the ground on which Exchequer Street now stands. The lawyers were then lodged in this Inn, and the Exchequer was located there also; but in 1348, upon a day when the Lord Deputy and the garrison were absent, and whilst the Courts were sitting, and the causes at hearing, the Byrnes, whose descendants frequent our Courts now-a-days, making a swoop from their rocky homes in the Wicklow Mountains, came down upon the money-chests, put the judges to flight, demolished the Inn, and returned homewards laden with plunder. The lawyers, we lament to state, in place of fighting, ran away; but we take comfort in this high probability, that they "lived to fight another day."

About the year 1337, the power of England commenced to decline in the Province of Connaught, and before the middle of the fourteenth century it had all but vanished. In one place, however, an English colony continued to preserve English laws, manners, and customs, and that was the walled town of Galway. Thenceforth for two hundred years the King's writ did not run in other places beyond the Shannon. To understand how so disastrous a state of things arose, it is necessary to bear in mind the great influence of the powerful family of the De Burghs, and the position they held in the west of Ireland. Amongst the companions in arms of William the Conqueror, when in 1066 he invaded England, was his half-brother, Robert De Burgh, who, having fought at the battle of Hastings, was created Earl of Cornwall. The name De Burgh is derived by Sir Edward Coke, in his chapter on "Tenure by Burgage," from the towns or burghs where they dwelt.¹ Naturally, the Conqueror bestowed vast possessions upon his brother, whose descendant in the next century, William FitzAdelm de Burgh, Lord Lieutenant of Ireland, accompanied his cousin Henry II. in his invasion of that country; and to his son Richard De Burgh, created "Lord of Connaught," was made a grant of the Province of Connaught "as a lordship;" and he, at his death, in 1243, left two sons, Walter, Lord of Connaught, who became Earl of Ulster, and William Oge, or the younger, from whom the De Burghs of Clanricarde and Mayo are descended. Walter left one son, Richard, the Red Earl of Ulster, and Lord of Connaught, whose grandson, William, Earl of Ulster and Lord of Connaught, was brutally murdered at his Castle, near Carrickfergus, on Easter Sunday, 1333. On his murder, the Earldom of Ulster, and Lordship of Connaught, descended to his only daughter, Elizabeth De Burgh, who afterwards became the wife of Lionel, Duke of Clarence, second son of Edward III., King of England, and thus the Earldom of Ulster and Lordship of Connaught were conveyed to the Royal Family; and finally, on the accession of Edward IV., merged in the Crown. Now, the said William Oge, younger brother of Walter, Earl of Ulster, was father of Sir William the Grey, who left several sons, viz.:—Sir Ulic De Burgh, ancestor of the Earls of Clanricarde; Sir Edmund, ancestor of the Viscounts and Earls of Mayo; Sir

¹ Coke Littleton, 109a.

Redmund, ancestor of the Burkes of Castlehacket, now denominated of Ower, in the County of Galway; Sir Thomas, afterwards Lord Treasurer of Ireland; John, from whom sprung John De Burgh, Archbishop of Tuam; and Sir Henry. Those sons of Sir William the Grey, seeing that by English law their cousin Elizabeth had inherited the entire province of Connaught, besides the Earldom of Ulster, the Lordship of Meath, and Honour of Clare in Thomond, of all of which they would each have their share by Brehon Law, abjured the English laws and language, shook off the power of England, became more Irish than the Irish, and, under colour of Irish law, seized on the whole Western Province. The town of Galway, however, oscillated in its allegiance, sometimes to the Clanricardes, other times to the Crown, while more times it acted independently of both. How great soever the power of the De Burghs in the west of Ireland, it is still certain that they would never have been able to shake off the power of England, if the circumstances of the times had not been favourable to their project. At first the Plantagenet kings thought more of France than of preserving their Irish lordship; and later on, the Wars of the Roses wasted the strength of Britain, and made the reconquest of the west of Ireland for the time an impossibility. It was only the strong arm of the Tudors that restored in the west the laws of England which had existed there for a century and a-half after the Conquest.

As the town of Galway holds a prominent place in the history of Connaught, and as it will be frequently mentioned in these pages, a short account of its origin and its inhabitants will be acceptable to the reader. Antiquarians differ as to the derivation of its name; and we cannot safely place reliance on what they tell us about Galway at any period prior to the invasion of Henry II.; but it is probable that a town existed there long previous to that epoch, since its advantageous position at the mouth of the river joining Lough Corrib with the sea, must have early attracted attention. At the dawn of its authentic history (A.D. 1124), we find that a strong castle was built for the protection of the town, both of which, within the twenty-five succeeding years, were taken and destroyed by the army of the King of Munster. But the buildings of that day, if easily destroyed, were also easily restored; and the town

lingered on until shortly after the Conquest, when new vigour was infused into it by the settlement within its walls of certain noble and enterprising families, who are to this day known by the appellation of "The Tribes of Galway." The founders of these tribes were of noble birth; some of them are stated to have been officers in the armies of the De Burghs, when these last came to conquer and to plant themselves in the land; others won their escutcheons on the sands of Palestine; but all settling by some happy chance in the western town, and probably urged by the advantages of its position, devoted themselves to commerce, and won wealth in their dealings, first with Spain and the rest of the south of Europe, and later on with the West Indies. In this they resembled the aristocracy of many Italian cities, above all, of Venice, the vast mercantile transactions of whose untitled noblesse, the oldest in Europe, dating from the fall of the Roman Empire, are recounted in history, and are celebrated by the genius of Shakespeare. Commerce and civilization ever go hand in hand; and so the inhabitants of the town of Galway had acquired habits far in advance of the habits of the people that surrounded them. English writers of the sixteenth and seventeenth centuries speak in the highest terms of the people of the town—of their dress, their manners, their private residences, and their public buildings; and enough still remains of the grand old houses of the chiefs of the tribes to prove that such praises were well deserved.

The tribes were fourteen in number—Athy, Blake, Bodkin, Browne, D'Arcy, Deane, Ffaunt, Ffrench, Joyce, Kirwan, Lynch, Martin, Morris, and Skerrett. All these families (except, as we believe, Deane and Ffaunt) still possess large properties in the Province of Connaught, and hold amongst the aristocracy an honoured place, such as naturally belongs to ancient lineage, high character, and competent means. One of the Athys was Treasurer of Connaught, so far back as 1388. In 1290 Richard Blake was Portreeve of Galway. The Blakes of the Ardfry branch have been ennobled by the title of Barons of Wallscourt. A baronetcy was conferred in 1622 on Sir Valentine Blake, whose descendant, Sir Valentine, the fourteenth baronet, now resides at Menlough Castle, the ancient dwelling-place of his race.

The Bodkins spring from the renowned race of the FitzGerald

of Desmond. Thomas Bodkin was Mayor of Galway in 1506. The Brownes were amongst the earliest of the English invaders. The great ancestor of the D'Arcy family, Sir John D'Arcy, was Chief Governor of Ireland under the 1st and 2nd Edwards, and his descendant, James D'Arcy, was Vice-President of Connaught in the reign of Elizabeth, and served as Mayor of Galway in 1602. His son, Patrick D'Arcy, of whom we shall have to speak, was an honour to the bar, and the glory of the Connaught Circuit. Two branches of the family of Ffrench have been raised to the peerage—those of Castle Ffrench, and Ffrench-Park; and one of the name, John Ffrench, was Mayor of Galway in 1538. The ancestor of the Ffrenches accompanied William the Conqueror to England. The Joyces came to Ireland in the reign of Edward I., and have given their name to a territory in the west of the County of Galway. The Kirwans have given to literature and science an eminent philosopher, Richard Kirwan, the chemist. They are a truly ancient race; and one of their name was Mayor in 1530. The family of Lynch gave to Galway, in 1274, the first Provost of whom we have any account; and the first Mayor, A.D. 1485, was Pierce Lynch. This race is old amongst the oldest. The branch of Castle Carra was raised to the rank of Baronet in 1622, and the Right Reverend John Lynch, Catholic Bishop of Killala, was author of the celebrated book, “*Cambrensis Eversus*.” Oliver Martyn, the ancestor of the Martyns, is said to have won, in the Holy Wars, the heraldic bearings of his family from Richard Cœur de Lion. William Martyn was Mayor of Galway in 1519. The Morris family settled in Galway at a very early period; and we find one of the name Sheriff (or, as it was then called, Bailiff) of the town, so far back as 1486, and another, William Morris, was Mayor in 1527. The present Chief Justice of the Common Pleas, the Right Honourable Michael Morris, is the representative of this ancient race. - One of the Skerretts was Provost of Galway in 1378; and the family of Skerrett gave to the town several of its Mayors in early times.

Previous to 1396 Galway was a corporate town by prescription; but in that year a charter was granted by Richard II.; and in 1484 Richard III. granted another, by which its rights and privileges were greatly increased. In this latter year also, the Pope, at the request of the inhabitants, approved of the act of the

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Archbishop of Tuam, who had released the town from his jurisdiction, and had erected its principal Church (that of St. Nicholas) into a Collegiate Church, to be governed by a Warden and eight Vicars, the right of presentation being vested in the Mayor, Bailiffs, and "Pares," the peers or equals of the town, for ever.

Although our purpose is to write of the Connaught Circuit, still we may be pardoned if we linger longer on the times which preceded its creation, with the view of giving a better idea of the state of the country and of the town at that period ; all the more shall we hope for pardon, as we purpose to relate a story of punishment of crime, such as for the love of justice it displayed stands perhaps alone in modern history. Such a narration of justice must find a fitting place in this Prologue to the History of the Connaught Circuit.

In 1493 James Lynch Fitz-Stephen was Mayor of Galway. In the course of his mercantile transactions with Spain he had found it necessary to visit that country, where, when at Cadiz, he was hospitably entertained at the house of a wealthy merchant, whose name was Gomez. Gomez had an only son, a young man of nineteen, the pride and the hope of his declining years, and Lynch, on preparing for his homeward voyage, begged of Gomez to permit his son to accompany him to Galway, assuring him that he would treat him with more than a father's care. With such assurances the young man was permitted to depart, and after a short and delightful voyage they arrived in Galway. The hospitalities of the town were then profuse, and the young Spaniard was everywhere welcome, winning for himself "golden opinions from all sorts of people." James Lynch Fitz-Stephen was extremely popular; and as a mark of the esteem of his fellow-citizens he had been elected, during his absence, Mayor of the town—an office which carried with it great responsibilities, especially at a time when the chief magistrate, having command of the soldiery, possessed not alone the judicial but the executive power of local government. In the very first month of his office, a young man, accused before him of a barbarous murder, was found guilty, and was, despite of many entreaties, executed ; for the Mayor had resolved that in his year of office no murderer should escape with impunity. So deeply was his stern vengeance dreaded, that crime ceased for a while to be committed,

and life and property were secure in the town of Galway. His hospitalities were on a scale of magnificence, "and he dined so worshipfully that all men wondered." Meanwhile the Spaniard despatched a letter by the captain of a vessel which was then about to sail to Cadiz, descriptive of his happy sojourn in Galway. Now there was at that time a family of the Tribes, in whose house Spanish was spoken with great purity, especially by one whose easy and elegant manners showed that she had been accustomed to move in the upper ranks of society. Walter Lynch, son of the Mayor, fascinated by her charms, had hoped that at no distant date he could make her his own; his love is said to have been returned; nevertheless he beheld with dismay the pleasure young Gomez took in her society. She delighted in the language of Spain, and she was wont to converse with the stranger in words which the jealousy and ignorance of Walter Lynch attributed to love. It was late on an autumnal evening when Walter was returning to his home, that he saw the Spaniard coming forth from the house of the young lady. Lynch rushed upon his supposed rival, who, seeing that he was attacked, fled towards the quay, where his pursuer came up to him, stabbed him to the heart, and flung him bleeding into the sea. On the following day the lifeless body was cast on the ocean shore, and the truth was then revealed that he had been foully murdered. Who can tell the feelings of the Mayor when the dreadful intelligence was conveyed to him that the only child of his foreign friend was a corpse, murdered, and within his jurisdiction? Meanwhile horror-stricken at what he had done, the murderer confessed the deed. His unhappy father issued a warrant for his arrest, and he was flung into prison. The judge who had so lately condemned another was now called on in equal justice to condemn his own son! He did condemn him, and refused to entertain any application for mercy.

Early on the morning of the day on which the young man was to die, the father descended into his dungeon, holding a lamp, and accompanied by a priest (from whom the account was received), and locking the gate, kept fast the keys in his hand. His son drew near, and asked if he had anything to hope. The father, weeping, answered, "No, my son! your life is forfeited to the laws, and at sunrise you must die. I have prayed for your prosperity, but that

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is at an end—with this world you have done for ever. Were any other but your wretched father your judge, I might have dropped a tear over my child's misfortune, and solicited for his life, even though stained with murder; but you must die—these are the last drops which must quench the sparks of nature; and, if you dare hope, implore that Heaven may not shut the gates of mercy on the destroyer of his fellow-creature. I am now come to join with this good man in petitioning God to give you such composure as will enable you to meet your punishment with becoming resignation." The priest then administered the last sacraments; the young man joined fervently in prayer, and sighed heavily from time to time, but spoke of life and its ties no more. At daybreak the father motioned to an attendant to remove the fetters; they ascended a flight of steps, and passed on to gain the street which led to the usual place of execution. But prodigious crowds had gathered there, loud in cries for mercy, and in threats of vengeance if mercy were not accorded. It was impossible to proceed. The judge stood alone, as he represented the majesty of the law. The very soldiery were not to be depended on. Even the executioner refused to perform his work. The hearts of men were stirred within them, for it was the lips of the father that had spoken the words of doom! And so, within the threshold of the house, he stood with his son alone! And he took him up a winding-stair that led to an arched window, which looked out upon the street and upon the crowds below. The rope, which was about the young man's neck, he fastened to an iron bar projecting from the wall. "And now, my son," said he, "you have little time to live. Let the care of your soul employ these few moments. Take the last embrace of your unhappy father!" He embraced him, and launched him into eternity!

The house in which this tragedy took place still stood within the memory of living men in Lombard Street, which is even yet known by the name of "The Dead Man's Lane." Close by the window a monument was fixed in the wall—a mural slab of black marble, on which are sculptured a skull and crossbones, with the legend, "REMEMBER DEATHE—VANITIE OF VANITIES AND ALL IS BUT VANITIE." A few years ago this house was removed to allow the widening of the street, but the slab, placed in a wall immediately

to the rear, still commemorates the deed. Opinions may be divided as to the act of the father, but few will question the integrity of the judge. It is but seldom that duty demands, or nature permits, so fearful a sacrifice. But whenever nature does thus yield to duty, history loves to commemorate, and poetry to celebrate, the deed. So has it been with Abraham, and Jephthe, and the elder Brutus; so with the father of Iphigenia; so is it with James Lynch Fitz-Stephen—his name still lives on in the traditions of a justice-loving people!

The re-introduction of English law into the Province of Connaught is due to Henry VIII., who took upon himself the title of King of Ireland. He suppressed the monasteries wherever his power extended, and their properties he usually granted to the great lords of the country. The chief of these in Galway was Ulick Burke Mac William Eighter, whom, in 1543, he created Earl of Clanricarde. The Royal reformer did not long survive these acts of spoliation; but his son, Edward VI., was also intent on establishing the English laws within the Province. He therefore commissioned his Chancellor of Ireland, Sir Thomas Cusack, to make a tour in the western countries, and report his observations when made. That report, which afterwards appeared in the shape of "a booke directed to the Duke of Northumberland" in 1552, is replete with information on the state of the Province of Connaught in the reign of Edward VI. Of the country between Thomond and Galway, the Chancellor writes that "it was governed by Mac William, Earl of Clanricarde, that there was only two ploughs at work there until lately, and now that there are forty ploughs, that ploughing increaseth daily, thanks be to God, and the people be now so quiet that they leave their ploughs, irons, and cattle in the fields without fear of stealing, and experience showeth that there can be nothing so good to be used with such savage people as good order to be observed and kept amongst them, for execution of the law is more feared when it is done in order than any other punishment." He next speaks of Mayo. Mac William Burke, ancestor of the Viscount Mayo, "is next to the Earl of Clanricarde in supporting the King's Majesty in every place in Connaught." He then suggests that a Presidency Court—a suggestion afterwards carried out by Queen Elizabeth—be

established in Connaught; “and if a president, and also a captain, with a competent number of men continuing at Athenry, be established, these two will be able to rule all Connaught, which is a fifth part of Ireland.”

Queen Mary, following so far in the footsteps of her father and brother, warmly espoused the idea of establishing, on a firm basis, English laws in Irish districts. She had already erected the great central countries of Leinster into the King's County and Queen's County; she had increased the pay of the judges, and had resolved on introducing the Circuits within “the wild territories.” Accordingly, on the 18th of April, 1556, the following instructions were given by her to the Lord Deputy, the Earl of Sussex:—“The Deputy is to have regard to the execution of justice, and that the laws already made, and those at the next Parliament to be made, be executed, the lack whereof has caused many complaints and many mischiefs, besides the loss of our possessions, regalities, rights, duties, and obeisance there. And forasmuch as, for lack of ministration of justice there, malefactors of late years have more and more increased, while the fees of the ministers of the law have doubled for the purpose of enabling them to ride abroad into the wild countries, to minister justice.” Her Majesty pressed on the Lord Deputy the “necessity of sending out Circuiting Judges, with commissions of Oyer and Terminer. We will, therefore, that our said Deputy and Council shall most diligently give order that there be addressed to some of our judges, barons, learned counsel, and other discreet and wise men, commissions of Oyer and Terminer, the riding charges of the commissioners to be borne by the countries where they sit to administer justice.”¹

Queen Elizabeth, adopting in this respect the policy of her sister Queen Mary, on the 4th of July, A.D. 1562, wrote to the Earl of Sussex, recommending him to take steps for the establishment of a provincial court for the Province of Connaught, as well as for Ulster and Munster. “We wish that three places of councils, and councillors for the same, be devised and established for the remote parts; for example, one at Athlone, for Connaught; one at Limerick, for Munster; and one at Armagh, or Newry, for Ulster; for the establishing whereof we think for the present that it should be meet

¹ Carew MSS., 253-4.

to ordain, that at every of the places there should be a president, with a justice and certain councillors with him ; and for honour and authority, to join also with them in commission, the Earls, Bishops, and the principal nobility of that part of the realm ; and the same president, justice, and council, to keep ordinary sessions at certain convenient and limited times and places, wherein the controversies of the countries might be heard and determined, according to order of common law, or in form of chancery, according to equity, and to use therein, at the beginning, such lenity, discretion, and order, that the people may find comfort, and taste of the fruits of peace and good order, and afterwards to induce them to live and be answerable to the common laws, as other of the five English shires be.”¹

In reply to this royal missive, the Earl replied, that he had travelled as Lord Lieutenant, or Deputy, to Queen Mary, for several years, and that it was his conviction that there should be three provincial courts established ; that Clare should not be within the jurisdiction of the presidents of either Munster or Connaught, but that the Earl of Thomond, Chief of Clare, should be as a person lying between both presidencies, and should be a member of both councils, ready to assist either, as occasion might require.

The Earl next suggests that the Brehons, in Irish cases, should practise at the Bar, and that they have their fees allowed to them.

A.D. 1569.—The suggestion as to the formation of the Presidency Court of Connaught, though delayed for seven years, owing to the troubled state of the country, was at length adopted. Athlone was selected as the fittest place for the President (who was also Governor of Connaught) to reside in, and Sir Edward Fitton was appointed first Lord President, Raafe Rookely Chief Justice, Robert Dillon Second Justice, and John Crofton Clerk of the Council. The following is from the Patent Rolls² :—
 “ Clause in the Queen’s letter, directing Raafe Rookely to have one month’s entertainment, to commence from his arrival in Ireland, and allowance for his residence, to practise at the law.” Then follows the concordatum of the Lord Deputy and Council, stating “ that the Queen had sent over Sir Edward Fitton, as Lord President of the Province of Connaught, and Raafe Rookely to be

¹ Carew MSS., 329.

² Morrin’s Patent Rolls for 1569, p. 533.

Chief Justice of the said Province, and containing instructions to the Lord Deputy to select a suitable man of the country, learned in the laws, and with a knowledge of the Irish tongue, to act as assistant to said Chief Justice, and a suitable person to be Clerk of the Council, to which offices they, the Deputy and Council, had appointed Robert Dillon to be assistant, or second Justice, and John Crofton Clerk of the Council and of the Province.

The better, therefore, to enforce the orders of this high court, it was resolved that the Province should be divided into several counties or shires, and that each county should be provided with a sheriff or officer of the shire. This division (which had been arranged in the time of the government of the Earl of Sussex, which terminated in 1564) was now carried into effect by his successor, the Lord Deputy, Sir Richard Sidney. In addition to the sittings of the court at Athlone, sessions were also held in the several counties by the Judges of the provincial court, and not unfrequently a member of the superior courts in Dublin was appointed to discharge this office. The duties of the Lord President were rather of a military than of a judicial nature.

The rigour of Sir Edward Fitton's rule goaded the people into resistance; even the old and hitherto faithful friend of the English rule, the Earl of Thomond, was forced to resist his authority. Fitton appointed a court to meet in the year 1570, for South Connaught, in the Franciscan Abbey of Ennis, but the Earl refused to attend, and the President was obliged to fly, committing himself to the safe-keeping of the Sheriff of Thomond, who conducted him with all speed to Galway.

Two years subsequently (March, A.D. 1572), he held a court in Galway for his entire jurisdiction from Sligo to Limerick. He caused the Earl of Clanricarde to be arrested and brought a prisoner to Dublin, when he committed him to the charge of the Lord Deputy, while he returned himself to Athlone. But the Earl had now full opportunity of laying before the Deputy the harshness of the President, who was soon after in consequence removed from office; and so odious had he made the name of President, that Sir Nicholas Malby, on being appointed to succeed him in the year 1576, was invested instead with the title of "Colonel of Connaught." Clare was then detached from his jurisdiction, and was united to

Munster. Malby spent but little time in his own province, for his military genius was such that the Government were compelled to call on him to aid the President of Munster in crushing the revolt in that province of the Earl of Desmond. To his court in Athlone were given the services of an eminent lawyer, Thomas Dillon, who was appointed Chief Justice of the Province of Connaught, *vice* Rookely, resigned. This gentleman, ancestor of Lord Clonbrock, purchased a large estate and settled at Clonbrock, in the County of Galway. In 1579 Clare was again united to Connaught. After a series of dismal campaigns, in which glory was not to be won, Malby returned to Athlone, where he died, having filled the office of President for eight years.

Queen Elizabeth now suggested that the uncertain taxes paid by the landlords of Connaught should be compounded for a certain fixed tax ; and with this view she addressed her Royal Letters to the Lord Deputy, Sir John Perrott ; and she, at the same time, desired that a Connaught Circuit for the Judges should be formed ; that the Assizes for the County of Sligo should be held in the town of Sligo ; that Roscommon should be the Assizes town for the County of Roscommon, Burrishoole for the County of Mayo, and Ballinasloe for the County of Galway ; but she made no suggestion as to either Leitrim or Clare. Accordingly (A.D. 1584), Sir Richard Bingham, ancestor of the Earl of Lucan, having been appointed President of the Presidency Court, and Governor of the Province, immediately applied himself to carry out the Queen's instructions as to the composition of Connaught. For this purpose he held a Sessions Court in the County of Mayo, when it was agreed that indentures should be executed between Her Majesty of the one part, and each of the Lords and Chieftains of the Province of the other, whereby such Lords and Chieftains agreed to pay thenceforward a regular composition tax of ten shillings on every quarter of land of about 120 acres, in lieu of the former irregular assessments ; while the Crown granted them their estates in fee simple, to descend according to the English law of descent. This deed has ever since been known as "The Composition of Connaught." This grant of the fee, which gave the landlords, as it was then supposed, an indefeasible title, was

afterwards, in the reign of James I., questioned, on the ground that the Lord Deputy had not been empowered by the Queen's Letter to grant any estate whatever, but that the arrangement was merely intended to be a composition of taxes. Bingham held, in January of this year, a Sessions Court in Galway, at which Gerald Comerford, the Attorney-General for the Province, prosecuted, and by sentence of which seventy persons, men and women, were executed. Sessions were again held in the following December, and a large number were again handed over to the executioner; amongst whom were the Mac Shehys of Munster, who had fought in the Geraldine wars. But this was cruelty, not justice. Repeated complaints were accordingly made to the Queen by the Lord Deputy, of the intolerable oppression of Sir Richard Bingham; and at length these accusations (1596) became so frequent, that he left Athlone without permission, to answer the charges preferred against him, and, on presenting himself at Court, was committed to prison, and dismissed from office.

Sir Conyers Clifford, a just and humane man, succeeded him in 1597. Immediately on his appointment, he was called into the field, and appointed his kinsman, James Darcy (ancestor of the Darceys of New Forrest, in the County Galway) his deputy at Athlone. The Earl of Essex was then Lord Lieutenant of Ireland, and under his sway the English were suffering disastrous defeats from the Irish, who detested the English Church and rule from north to south in the country. Marshal Bagnal, the most illustrious of the generals of Queen Elizabeth, had fallen at the battle of the Yellow Ford, on the 14th of August, 1598; and on the 15th of August, 1599, Sir Conyers Clifford, advancing at the head of a well-appointed army, through the Curlew Mountains, had reached the famous pass of Ballaghboy, when he was attacked by Brian Oge O'Rorke, Prince of Breffney, with such impetuosity that the English troops gave way and fled. Clifford refused to join the flying throng, and breaking from those who would have forced him from the field, was killed, according to the Four Masters, by a musket ball; but others say that he was pierced through the body with a spear. When the battle was over, his corpse was recognised by O'Rorke, who had him honourably interred in the Monastery of Lough Key. His death excited a feeling of deep regret amongst the Irish,

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who esteemed him for his exalted principles of honour and humanity.

A.D. 1601.—Walter Surlock was appointed Attorney-General of the Province of Connaught.

A.D. 1602.—On the petition of the Earl of Thomond, the County of Clare was detached from the jurisdiction of the Presidency Court of Connaught, and was united to Munster.

CHAPTER II.

A.D. 1604.



OF the remote antiquity of Circuiting Courts, of Circuiting Judges, and of Circuiting Towns, there can be no manner of doubt, for it is written that, eleven hundred years before Christ, "Samuel judged in Israel all the days of his life. And he went from year to year on circuit to the towns of Bethel, and Gilgal, and Mizpeh, judging Israel in all those places."¹ In the Roman Empire, the circuits were regularly travelled by the judges. In France and in England they became, as it were, institutions of the country; but it was not until James I. ascended the throne that the circuits became and were universally established in Ireland. In the following year his Majesty appointed Sir Arthur Chichester his Lord Deputy in Ireland, and he established new circuits, sending the first Justices of Assize into Connaught. Sir Arthur was aided in his course of procedure by an able and astute minister, Sir John Davis, who had, on the 25th of September, 1603, arrived in Dublin, as Solicitor-General for Ireland. His career had been a chequered one. From the Middle Temple he had been called to the English Bar, and from that Bar had been disbarred in the year 1598, for conduct so outrageous that nothing else remained for the Benchers in the matter to do. It appears that on the evening of the 9th of February, 1597, he came into the dining-hall with his hat on his head, and attended with two attendants, armed with swords; and going up to the barristers' table, where a lawyer named Richard Martin was sitting, "pulled from under his gown a cudgel, *quem vulgariter vocant* 'a bastinado,' and struck him upon

¹ 1 Sam vii. 15, 16.

the head repeatedly, and with so much violence that the bastinado was shivered into divers pieces. Then retiring to the bottom of the hall, he drew one of his attendants' swords, and flourished it over his head, turning his face towards Martin; and then turning away adown the water-steps of the Temple, threw himself into a boat."¹ For this outrageous act he was disbarred, expelled the house, and deprived of his authority ever to speak or consult in law. After four years' retirement he petitioned the Benchers for his restoration, which they accorded on the 30th October, 1601, upon his making a public submission in the Hall, and asking pardon of Martin, who at once generously forgave him. Both the principals in this outbreak and reconciliation became honourably known in the profession—Martin rising to be Recorder of London, and Davis Attorney-General and Speaker in the House of Commons in Ireland, and achieving such a status in politics and law, that he was appointed to the Chief Justiceship of England, an office which sudden death prevented him from filling.²

The towns chosen for holding the assizes in the Connaught Circuit were Galway and Loughrea, alternately, for the County of Galway; Roscommon, for the County of Roscommon; Sligo, for the County of Sligo; Leitrim, for the County Leitrim; "whilst for the County of Mayo, although the jail was at Cong, and though the assizes were to be held twice a-year there, there were no certain towns fixed upon for holding therein the same." Had the circuit thus happily inaugurated been permitted smoothly to work on, unstained by religious prejudices, there can be no manner of doubt that law and order would have found from the beginning there a sure haven; but it was the policy of England at that time to poison justice at its fountain, and prevent Catholic lawyers from pleading in courts of justice for a Catholic people. James I. required by proclamation all Catholic barristers to take the oath of supremacy, and many ceased in consequence to practise at the bar.

Richard, Earl of Clanricarde, was appointed, in this year (1604), President of the Presidency Court of Connaught. Previous to this time, none of the titled aristocracy had been raised to that

¹ Fosse's Judges of England.

² Jeaffreson's Book about Lawyers, Vol. ii., p. 111.

important post. "We think," writes James I. to the Lord Deputy, "that it would be more for our service that the Province of Connaught have a Governor with a title, as our Province of Munster hath."¹

A.D. 1606.—Thomas Dillon, Chief Justice of Connaught, died, and was succeeded in that office by Henry Dillon, Attorney-General for the Province of Ulster.¹

A.D. 1607.—In this year Henry Dillon resigned, and was succeeded by Geoffry Osbaldistone, a Bencher of Gray's Inn, and Justice of the Irish Court of King's Bench. The office of Chief Justice of Connaught must then have been held in high estimation, since we find this gentleman exchanging for it his seat in the superior Courts of Common Law.

A.D. 1610.—The town of Galway, with the exception of St. Francis's Abbey, where the County Court-House now stands, was erected into a separate county, known as the County of the Town of Galway.

A.D. 1615.—The Earl of Clanricarde caused Sir Oliver St. John and Sir Thomas Rotheram to be appointed Commissioners for hearing causes in his court at Athlone.

A.D. 1616.—The duties of Governor of the entire province were too much for the Earl, and "he accordingly did endeavour to perswade the King to take the County of Galway, and the County of the town of Galway, out of y^e jurisdiction of the Provincial Court of Connaught, and to have himself appointed President thereto. With this design did he present a petition to the Crown, that the County of Galway might be erected into a separate jurisdiction, quite independent of y^e rest of y^e province."¹ He was accordingly appointed Governor of the County, and County of the town of Galway by privy seal, during pleasure; "he to be principal in the Commissions of Oyer and Terminer, with the Justices of Assize in their circuits, with a power to appoint a Deputy, pursuant to said privy seal. An annuity, pension, stipend, or fee of ten shillings a day for life out of the revenues of the said county and town," was granted to his lordship by "patent, dated 29th June, 1616, with remainder to his son and heir, Ulick Burke,

¹ Patent Rolls.

Baron of Dunkellin, for life, after his father's death."¹ The Earl then resigned the presidency of the Province, which was conferred on Viscount Wilmot.

A.D. 1632.—Even yet the assizes for the County of Mayo had not been held at any fixed place, although the county jail was at Cong; and the greatest inconvenience was consequently felt, as it became necessary to convey the prisoners long distances from the court to the prison. Lord Mayo brought this matter under the notice of the Crown immediately on his taking his seat in the House of Lords. His lordship in his petition stated, "that there was no certain place within the County of Mayo for the holding of the assizes, sessions, and other public meetings of the ministers of justice about the affairs of that county, and that the jail being kept in Cong, in the most remote part of the county, the inhabitants did not only suffer in their estates by the journeying of disorderly prisoners with their guards throughout the country to the place where the judges met, but justice was also many times prevented by the ordinary escape of notorious malefactors."² He then suggested "that the town of Belcarra, now a village, near his residence of Castle Bourke, and on the road from Castlebar to Ballinrobe, was the fittest and most central place for holding the assizes. The King, on the 10th of July, 1632, caused the affair to be submitted to the Lord Deputy, directing him at the same time to consult the judges concerning the subject-matter of his lordship's petition; and they having made a favourable report, his Majesty was pleased to cause letters patent to issue authorizing the holding of the assizes at Belcarra for the next thirty-one years. After the expiration of this period, they were for half a century held at Ballinrobe and Belcarra alternately. Criminals condemned to death in the latter place were executed from a tree on the lands of the neighbouring Abbey of Ballintober, and hence a verse well known in Mayo—

"Shake hands, brother—you're a rogue, and I'm another;
You'll be hanged at Ballinrobe, and I'll be hanged at Ballintober."

¹ Pat. Rol., 14 Jac. I. 2 p. d. n. 8-9.

² Lodge's Peerage, Vol. ii., p. 330—n.

A.D. 1634.—Geoffry Osbaldistone, having filled the office of Chief Justice of Connaught for twenty-seven years, resigned in this year, and was succeeded by Sir James Donelan, Fellow of Trinity College, and M.P. for the University of Dublin. The appointment of Sir James gave much satisfaction to the Irish party, as he was descended on his father's side from one of the oldest of the Irish families, whilst his mother was daughter of O'Donel, the exiled Earl of Tyrconnell.

THE STRAFFORD INQUISITIONS.

A time was now at hand (A.D. 1635) when the policy of confiscation and plantation, adopted by James I. in Ulster, after the flight of the Earls of Tyrone and Tyrconnell, was to be enforced in Connaught. To get rid of the old proprietors and deprive them of their estates, and to plant adventurers from England and Scotland in their stead, such was the design of the arbitrary minister Wentworth, and of his master, Charles I.; but it was a work of some magnitude to eject those who held their lands on the most solemn compact that could be entered into between the State and the subject. Sir Thomas Lord Wentworth, afterwards Earl of Strafford, was then Lord Deputy. This nobleman was eldest son of Sir William Wentworth, of Wentworth Woodhouse, in the County of York. He was one of the ablest, as he was one of the most unscrupulous, men of his time. Ambition was his besetting sin. Ambition led him, at the first, to make overtures to the Court, and when those overtures were fruitless, to join the popular party. Ambition detached him subsequently from that party, and gave him place in the councils of the King. Every student of English history knows the means devised by him for rendering the King independent of his Parliament. A halo rests, notwithstanding, around the memory of this great bad man. The hatred of his enemies, his trial before the peers, the eloquence of his defence, the King's desertion of him, his tragic end, his courage at the last, all contribute to make men forget those crimes, for some at least of which he deserved to die. But amongst those crimes stands prominently forward that crime with which we have to do—the attempt to con-

fiscate the territories of the western Chieftains, and confer them on Scotch and English adventurers. And this was to be done by injustice under the guise of justice—robbery under the sacred forms of law ! By his advice, then, special commissions were directed to the following Commissioners of Plantation : to Viscount Ranelagh, President of the Connaught Presidency Court ; Robert Dillon, a lawyer of great eminence ; Christopher Wandesforde, Master of the Rolls ; Gerald Lowther, Chief Justice of the Court of Common Pleas ; Ph. Mainwaring, of the family of Over-Peover, in Cheshire ; Adam Loftus, son of Lord Ely ; and Sir George Radcliffe ; under which they were empowered to empanel juries to inquire into the titles under which the whole territory of Connaught, consisting of Leitrim, Roscommon, Sligo, Mayo, the County of Galway, and the County of the town of Galway, were held. The County of Leitrim having surrendered without a trial, the first inquiry was held at Boyle, in the County of Roscommon. A jury was sworn to try “ what estate, right, or title the King, or any of his progenitors, had, or of right ought to have had, to the whole territory of Roscommon.”

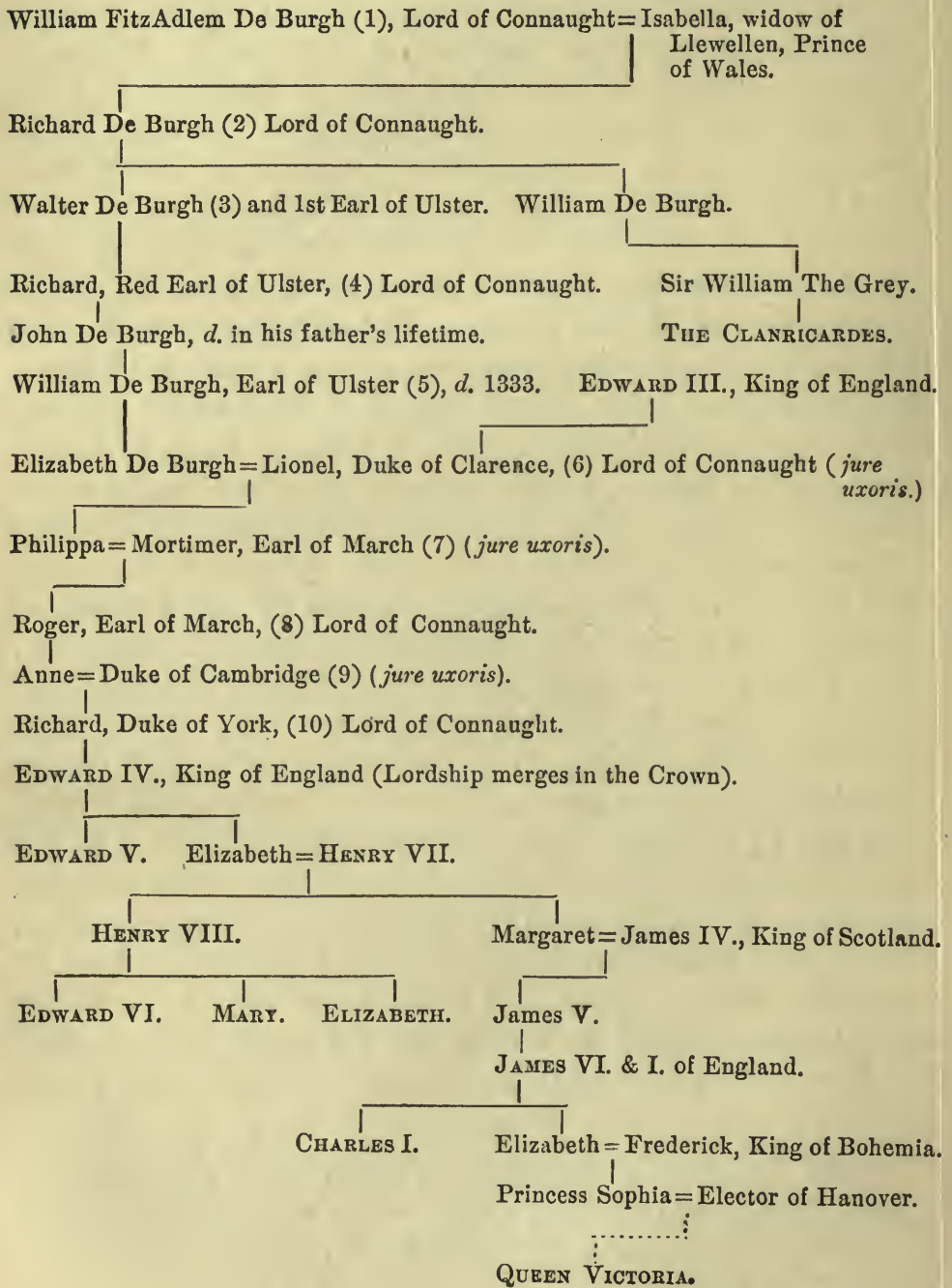
The Attorney-General for Ireland (Sir William Ryves), with whom were William Hilton, Attorney-General for the Province of Connaught, and a number of other lawyers, appeared for the Crown ; whilst Patrick D’Arcy, and his nephew Geoffry Browne,¹ both Catholics, appeared for the Roscommon proprietors. The case for the Crown was, that Henry II. on his invasion of Ireland became entitled to the whole Province of Connaught, by the right of conquest, and by the several other titles set forth in the Act for the attainder of O’Neil (11th Eliz., Sess. 3, ch. 1) ; that being so entitled, he by grant, made in the year 1179, granted the same to his relative, William Fitz-Adlem² De Burgh, whom he constituted Lord of Connaught, who thereupon, the grant being also made to his heirs, became entitled to the fee in the entire province, and that Charles I., descended from him, was his direct heir, and as

¹ II. Lodge’s Peerage, tit. Viscount Mayo, p. 323.—Ed. 1754.

² William Fitz-Adlem was the son of Adlem De Burgh, who was married to Agnes, daughter of Louis VII., King of France, which Adlem was son of William, Earl of Cornwall, who was son of Robert, Earl of Cornwall, brother of William the Conqueror.

such was entitled to the fee of the entire province in as full and large a manner as his ancestor, the said William Fitz-Adlem¹, had

¹ The following chart will explain at a glance the descent of Charles I. from William Fitz-Adlem De Burgh :—



been; that William Fitz-Adlem had one son and heir, Richard De Burgh, second Lord of Connaught, to whom Henry III., on the 21st of December, 1226, confirmed the grant of Henry II.; that Richard was succeeded at his death in 1243 by his eldest son and heir, Walter De Burgh, who was also first Earl of Ulster, and third Lord of Connaught. His son Richard, surnamed the Red Earl, had a son John, who died in his father's lifetime, leaving a son William, who succeeded his grandfather as third Earl of Ulster and fifth Lord of Connaught. He was murdered on Easter Sunday, 1333, and left at his death an only daughter and heiress, Elizabeth, who married Lionel, Duke of Clarence (third son of Edward III., King of England), who thus became, in right of his wife, sixth Lord of Connaught. Lionel left an only daughter and heiress, Philippa, wife of Mortimer, Earl of March, who, in right of his wife, became seventh Lord of Connaught, and was succeeded by his son and heir, Roger, Earl of March, eighth Lord of Connaught, whose daughter and heiress, Anne, was wife of the Duke of Cambridge, who in her right became ninth Lord of Connaught, and was succeeded by his son and heir, Richard Plantagenet, Duke of York, tenth Lord of Connaught, whose son and heir, EDWARD IV., King of England, was eleventh Lord of Connaught; that from Edward IV. the lordship of Connaught descended with the Crown through the various sovereigns of England to Charles I., the king who then reigned; and the Attorney-General therefore asked the jury to find that the Crown was entitled to the possession of the Province of Connaught in as ample a manner as his ancestor William Fitz-Adlem had been.

Counsel for the Roscommon proprietors submitted that the title to the county was not in the Crown; that the Lords of Connaught had not enjoyed the possession of the province since 1333, to the present time (1635), a space of more than 300 years, and that length of time therefore barred their claim. But even assuming, though not admitting, that the title had descended from Edward IV. to Queen Elizabeth, yet that she by her royal letters authorized the making of a deed (*bipartite*), which was executed between her Deputy, Sir John Perrott, and the Connaught proprietors in 1584; by which it was provided that their estates

should descend according to the English law of descent, upon paying a certain annual composition of ten shillings for every quarter of land (about 120 acres), and that if there were nothing else, they had thus acquired a valid title to their estates. That the Crown lawyers in the last reign, notwithstanding, having thrown doubts on the validity of these titles, suggested that all the Connaught proprietors should surrender their estates to the Crown, and obtain new patents and indefeasible titles; that in 1617, inquisitions were, under the royal letters of James I., taken of all the estates in the province; and that in 1619 patents were made to the great lords of the country, who, to save the expense of innumerable patents, had, under deeds of trust,¹ become trustees for the smaller proprietors, to whom they re-granted, by deed, what had been patented to them in great part in trust by the Crown; that the fees of enrolling these patents amounted to £3,000; that that sum had actually been paid for their enrolment by the proprietors to the officers of the Court of Chancery, and that if those officers either negligently or wilfully had omitted to enrol them, the proprietors were not the parties to suffer; that the present king had been paid a portion of a subsidy of £120,000 by the Irish Catholics for the purpose, amongst others, of limiting the title of the Crown to lands at sixty years; and that the inhabitants of Connaught should be permitted to make new enrolments of their estates, in order to strengthen their titles; for it was admitted that the patents of James I. were not enrolled in Chancery within the proper time.²

To these arguments the Crown replied,—that Queen Elizabeth³ had not parted with whatever right to the lordship she was entitled to; that by her royal letters Sir John Perrott was authorized to enter into a tripartite and not a bipartite deed; that the deed of composition was only bipartite between the Deputy and the Connaught proprietors, whereas her Majesty should have been a third party; that Sir John Perrott had exceeded his powers by granting

¹ Copies of these deeds and patents in English are published in the Patent Rolls of James I.

² Howard's Revenue Exchequer, p. 42.

³ Strafford's Letters.

or pretending to grant to them the fee of their estates, whereas he was only empowered to make a composition of uncertain for certain taxes ; and further, that one of the stipulations of that deed, such as it was, was that the estates should descend according to the English law of inheritance, whereas the descent ever since followed was that of the tanistry or Brehon law ; that Queen Elizabeth died seised of the lordship, and that the late King James I. had not, for anything that appeared on the Rolls of the Court of Chancery, been stripped of that right, and that a patent is of no force previous to its enrolment. These several points were decided by the Court in favour of the Crown. Mr. Hilton, Attorney-General for the Province of Connaught, then addressed the jury. He told them that, in taking up the fee of the county, it was his Majesty's intention to make them a rich and a civil people, and participators in the glorious work of reformation which he had undertaken. Promises were not omitted that the jury would be remembered in the distribution of the lands ; and they, swayed by these promises, and under threats which could not be misunderstood, found for the king. Thereupon the Lord Deputy, who had occupied a place on the bench during the trial, recommended the foreman, Sir Lucas Dillon, to his Majesty, "that he might be remembered upon the dividing of the lands." Never has justice been more disgraced ; and we are told by Strafford (*Letters*, II., p. 241) that Sir Gerard Lowther, Chief Justice of the Common Pleas, got four shillings in the pound of the first year's rent, raised under the Commissioners of "Defective Titles."

The servile example set in Roscommon was followed in Sligo, where the trial was held, on the 20th of the same month (July), and in Ballinrobe, where it took place for the county of Mayo on the 31st ; but when it came to the turn of the County of Galway, the jury of that noble and aristocratic county, refusing to sanction such robbery by their verdict, to their immortal honour, found against the Crown. The trial came on at Portumna Castle, on the 14th August, where, notwithstanding the presence of the Lord Deputy himself, who sat on the bench, and the arguments of counsel, they unanimously found against it. Transported with rage, the Lord Deputy had the jurors instantly arrested and brought prisoners to Dublin. The old criminal law was ransacked, and it

was found, as the law then stood, that if a verdict of a jury be notoriously wrong, the jury may be punished.¹ They were accordingly put upon their trial before Sir Gerard Lowther, and each juror was fined in a sum of £4,000. Their estates were seized, and they themselves were sentenced to be imprisoned until those fines were paid. They petitioned to be discharged, but were refused, except on condition of their making a public acknowledgment that they committed not only an error of judgment, but even actual perjury, in their verdict—terms which they disdainfully rejected. The High Sheriff, Mr. Martin Darcy, of the Kiltolla family, was also thrown into prison, and died there, owing to the cruel treatment he had received. The Lord Deputy then applied that the counsel who argued the case should be silenced until they should have taken the oath of supremacy. Lord Wentworth's account of those proceedings, which is written from the very town in which he had suffered so ignominious a defeat, is as follows:—

“ To MR. SECRETARY COKE.

“ Portumna, 20th August, 1635.

“ I, the Lord Deputy, and others of the Commissioners trusted by his Majesty in his intended design for the plantation of Connaught, having taken our journey from Dublin for that service on the 30th day of June, have with some labour and pains travailed therein.

“ We began at Roscommon, where we caused a jury to be empannelled of the principal gentlemen and inhabitants of said county, before whom his Majesty's evidence being fully laid open by his learned counsel, it was manifest and clear that, contrary to their own private interests, they found for his Majesty. His Majesty's title being there found, we departed to the County of Sligo, and so from thence to the County of Mayo, and in every of which counties his Majesty's title was found in like manner. Our work ended in these three counties, we came to the County of Galway, where we apprehended, from private intelligence, more difficulty than in the other counties. When we came hither, we omitted nothing that we conceived might conduce to the clearing and manifestation of his Majesty's title. Yet the jury, neither regarding what had been done in the other counties, or the example of their neighbours, whose estates were as deeply involved as theirs, most obstinately and perversely refused to find for his Majesty, though we endeavoured to satisfy them several ways beyond any we had taken in the other three counties. We then fined the sheriff a thousand pounds, and bound over the jury to appear at the Castle Chamber, where it is fit that

¹ 2 Hales' Pleas of the Crown, p. 210.

their pertinacious carriage be followed with all just severity." He next complains that "the overwhelming majority of the inhabitants of the County of Galway are papists, over whom the priests and Jesuits exert uncontrollable influence. The counsellors-at-law were over busy, even to faction, and it was by the perswasion of these counsellors that the jury were misguided. Lord Clanricarde, the governor of the said county, whose great estates, together with his far-spread kindred, and the great relation the priests and lawyers have to his lordship, and all this fortified with his Majesty's power in his lordship's hands as Governor of the County of Galway, in nature little less than a County Palatine, renders him a person so potent in this country, as that nothing can move in this county without him." "To Lord Clanricarde, then, is to be traced the miscarriage of the proceedings, and Lord Clanmorris, his lordship's nephew, was heard to say, in a vaunting manner, before the jury gave in their verdict, that he would have given a great sum of money that the inquisitions commenced here, so that the other counties might have followed their example."

To this communication Mr. Secretary Coke thus replied¹ :—

"Right Honorable,

"The letter of the 25th of August, subscribed by you, the Lord Deputy, and the rest of the Commissioners, was so full that it gave great satisfaction to his Majesty and all those that attended him in this business.

"The three Counties of Roscommon, Sligo, and Mayo, which so readily found his Majesty's just title, deserve his Majesty's favour, which you will signify, as occasion do require, for the encouragement of them and others.

"For Galway, for his packed jury, the sheriff well deserveth to pay the fine which you have laid upon him, and the jury are properly returned into the Castle Chamber as censurable in that Court.

"If the boasting words of the Viscount Clanmorris can be proved against him, it will be fit such men should know they are accountable for such boldness.

"The scarcity of Protestants, and the plenty of priests and Jesuits, in Galway is very considerable, and which may be reformed; and such counsellors-at-law as have so frowardly and maliciously opposed the King's title, are justly to be pressed, either to take the oath of supremacy, or to be suspended from their practice as not fit men to profess the law for others which themselves will not obey.

"A greater proportion of the land should be taken from the pretended owners in the County of Galway than in the rest of the province."

The Secretary then expresses his disapproval of Lord Strafford's endeavour to have Lord Clanricarde removed from the Presidency of the County of Galway.

¹ Strafford's Letters, Vol. i., p. 464.

A.D. 1637.—Two years were permitted to elapse before the Lord Deputy again attempted to carry his point. He then caused two commissions to issue, addressed, with the exception of Lord Ranelagh, to other Commissioners; the one to find the King's title to the County, and the other to the County of the town of Galway. They met at St. Francis's Abbey, in the town of Galway, when the county jury, terrified at the example made on the former occasion, were forced to find for the Crown, as did also the jury of the county of the town, the day after, in the Tholsel Hall. Upon the return of these findings, the Lord Deputy caused a survey and maps (known as Strafford's survey), not remarkable for accuracy, to be made of the entire province, which was planted with settlers from England and Scotland, and those who had been proprietors of the soil for many centuries were expelled.

Nos patriæ fines, et dulcia linquimus arva;
Nos patriam fugimus.

Strangers now swarmed over the face of the province. No place was secure from their intrusion. They had succeeded in obtaining one-half of the lands of the County of Galway, and one-fourth of the lands of the other counties of the province. There are historians who read history backwards, and commence the narration of the war of 1641 with the first effusion of blood in that ill-omened year. We say that it is the duty of the historian to search out the causes of things, and we say fearlessly that, when this is done, the origin of the war must be mainly traced to the policy of the Stuarts and of Lord Strafford. Men will not yield up their property without a struggle. Irishmen were called upon to yield up their property and their religion. Whatever might originally have been the right of the Crown to the soil of Connaught, that right had lapsed after the long course of three hundred years. Three hundred years gave a title by limitation, or else there is no title by limitation in the nature of things. But as if to confirm that title by limitation, the proprietors could point, as we have already shown, to all the grants and re-grants in the reigns of Henry VIII., Elizabeth, and James I., and yet they now saw wrested from them by the strong hand a large proportion of their properties, by virtue of a claim, questionable at the first—then

surely obsolete. It is not in the nature of man to submit to such injustice ; and when the people of Ireland saw the English adventurers over the country like the harpies of mythology, they flew to arms, and the rebellion of 1641, a war *pro aris et focis*, began.

All confidence in the courts of "Justice" was shaken—courts which were, indeed, mere mockeries of that sacred name, then so often taken in vain. Whilst, on the one hand, the jurors who had found on their oaths that Charles I. had no title to the lands of the County of Galway were suffering imprisonment for that finding, the jurors of Mayo, Leitrim, Roscommon, and Sligo had been, on the other hand, amply rewarded ; and whilst the counsel *against* the Crown were persecuted, the counsel *for* the Crown were petted, were bribed, were promoted. Hilton, Attorney-General for Connaught, was raised to a seat on the bench in the Court of Exchequer ; and Sir Gerard Lowther, the Chief Justice of the Common Pleas (for the purity of the ermine was not unsullied in the general corruption), received an enormous sum of money.

A.D. 1637.—In this year Sir James Donelan was appointed third Justice of the Court of Common Pleas in Dublin, whilst he was still by patent allowed to continue Chief Justice of Connaught.¹

¹ "Liber Munerum Hiberniæ," Vol. i., pp. 32-38.

CHAPTER III.

A.D. 1641.



ALLIED by the weight of two ecclesiastical establishments, the Catholic people now refused longer to pay tithes to the Protestant clergy; and at the spring and summer assizes of this year there were multitudes of cases between the tithe owners and tithe payers.

Whilst the authority of the Protestant clergy was set at nought, that of the Catholic clergy was revered. This state of things is set forth in a "remonstrance of grievances in the Province of Tuam, presented to the Lord Deputy on the 12th of June, 1641."¹

Passing from these to other subjects equally dismal, we find knots of Catholic barristers demanding self-government, and insisting on the repeal of Poyning's Law, which had been passed in the reign of Henry VII., and which enacted that no Irish statute could be passed without the consent of the Privy Council in England. We find, too, in both Houses of Parliament, a feeling of uneasiness and discontent, engendered by the superiority claimed by the English over the Irish Court of Appeal. A question was now raised as to the legality of appeals taken to the English House of Lords—a question which the deep troubles of the latter portion of this eventful year prevented from being brought to a conclusion—a question which, after the lapse of seventy-eight years, was decided in the well-known case of *Sherlock v. Annesley*,² in 1719, by the English against the Irish Parliament—a question which, after 141 years, was decided by the Irish and against the English Parliament in the better-known case of "The Independence of

¹ MSS., Record Office.

² "Lords' Journals," Vol. ii., p. 660.

Ireland, in 1782." The question was now raised for the first time by a parliament of half Catholics and half Protestants, and by a parliament no longer that of the mere Pale. Patrick Darcy, a member of the House of Commons, and who then was, as he had been for years, the leader on the Connaught Circuit, was requested to argue the matter, from an Irish point of view, before a committee of the Irish House of Lords. He accordingly delivered his argument on the 9th of June, 1641; and though that great constitutional question has often been argued since, nothing has been added to his luminous and exhaustive treatment. His argument was published in 1643, and it may now be found on the shelves of the Library of Trinity College, Dublin; but the House did not then come to any conclusion on the point. Other questions agitated the people. To them it mattered little whether the final Courts of Appeal were in Westminster or in Dublin, for as the Courts of the First Instance had fallen below contempt, so, also, had the Courts of Appeal. All were darkened with crimes of the darkest dye. The whole country was now disturbed with the complaints of those who had lost everything that made life worth living for. Their altars had fallen, their homes had been desecrated; and with one voice, and with one intent, they appealed to arms, and rose as one man on the night of the 23rd of October, 1641. Massacres—wholesale massacres—are said to have followed each other with rapidity on every side and in every place in which the settlers had intruded. The English historians assert that 200,000 Protestants perished in that indiscriminate slaughter. The Irish historians assert that neither 200,000, nor any lesser number, perished, except on the open field of battle. It is neither our wish nor our province to inquire upon which side the truth lies, further than to say, that whatever excuse the injustice of the Government of Charles might have given for open and honourable war, yet that injustice gave not, and could not give, any excuse for massacres; and that, beyond all doubt, whatever may have been done elsewhere, a massacre of unarmed men, women, and children did take place on the Bridge of Shruel, on the morning of Sunday, 13th of February, 1641-2. It has been said, on the one side, that no provocation could justify the cruelties that the English suffered at the hands of the Irish people. It is said, on the other, that

the English people brought those sufferings (in so far as they did suffer) upon their own heads, and they were not unfrequently asked what brought them here, and why did they forsake their own country for ours? why come hither to enjoy "lands that were not theirs, houses they had not built, and vineyards they had not planted"? Suffice it to state that the annals of the Province of Connaught are reddened with blood in those years. Of the trial of those accused of the murder on the Bridge of Shruel, we shall defer speaking, until we arrive at the year 1652, when Theobald Bourke, Lord Mayo, was tried, found guilty, and executed for alleged complicity in that dreadful massacre.

A.D. 1642.—The insurrection went on; but as the Irish people acted (unlike the Covenanters in Scotland) without either plan or co-operation, they were beaten in detail. The Catholic Bishops, seeing that the English Government was going from bad to worse, framed an oath of association, which all Catholics throughout the land were enjoined to take. It was sworn by hundreds, thousands, and tens of thousands, of every age and description, vowing, with uplifted hands and weeping eyes, that, with the Divine assistance, they would dedicate life and fortune to maintain the object of their solemn engagement; and those who were bound together by this tie were called "the Confederate Catholics of Ireland."

On the 24th of October, one year after the outbreak, the Confederation, or General Assembly, commenced its sittings in the ancient City of Kilkenny. Eleven spiritual and fourteen temporal peers, with 226 commoners, representing the Confederate Catholics, assembled on this occasion, and amongst them were the three great luminaries of the Connaught Circuit, Sir Lucas Dillon, Patrick Darcy, who acted as Speaker, and Geoffrey Browne.¹ On every occasion, when difficult or delicate questions were to be discussed, these were the men upon whose learning, delicacy, and ability the Assembly could rely.

Early in 1644, the Marquis of Ormond was raised to the dignity of Lord Lieutenant of Ireland; and one of his first official acts was the removal of Chief Justice Donelan from the Court of Common Pleas, and commanding him to confine himself to his Court of

¹ Ancestor of Lord Oranmore.

Athlone. The President, Lord Ranelagh, died at the close of this year, and was succeeded by Thomas Viscount Dillon and Charles Viscount Wilmot, joint presidents. On the petition of the Catholic gentry, a commission was issued to inquire into the murders that were alleged to have been committed in 1641. The commissioners sat from March until October, and then it was that those *ex parte* affidavits made in the case of the massacre on the Bridge of Shruel were taken, which are contained in Sterne MSS., Library, Trinity College, Dublin.

To give an idea of some of the evidence there collected, look for the alleged massacre in Portadown, where "the ghosts of the poor murdered Protestants were seen rising from the water, and distinctly heard a-singing psalms and waving their hands, as though it were in vengeance."

A.D. 1645.—Sir Charles Coote was this year appointed to the Presidency of Connaught, vacant by the resignation of Lords Dillon and Wilmot. This appointment, nominally by the Crown, was in reality made by the Parliament of England. Immediately he commenced a merciless onslaught on the Catholics and Royalists of the Province, desolating its plains with fire and sword, and finally taking possession of the town of Sligo. By his occupation of this post, Sir Charles had the means of keeping in check the Royalists of the neighbouring counties.

In 1649 Charles I. closed on the scaffold his career.

A.D. 1650.—The Connaught Circuit had now for a season ceased to exist. Commissions were at uncertain times issued to the Judges; but the danger of holding the Assizes between 1642 and 1660, and the difficulty of getting together jurors, were so great, that it was considered advisable to depart from the ordinary system of trial by jury; and commissions from time to time were directed to special commissioners, who, after the manner of military tribunals, filled the office both of judges and jurors at the same time. The Catholic lawyers were scattered; no longer allowed to practise at the bar, they enrolled themselves under the banner of the Confederation of Kilkenny, and thought of nothing but how they might get some foreign prince to take them under their protection. Geoffrey Browne, long the ornament of the Connaught Circuit, was chosen by the Supreme Council, and approved by the

Confederation, to proceed with Lord Taaffe and Sir Nicholas Plunket as a deputation to the Court of the Duke of Lorraine, to solicit the aid of that prince, who was of a most restless and intriguing disposition, and who was accustomed to sell at a high price the services of his army to the neighbouring powers. On the 23rd of April, 1651, the deputies took their departure from Ireland for Amsterdam, where they arrived, after a voyage of six weeks, on the 6th of June. The following letter of Geoffrey Browne, from Brussels, to the Lord Deputy, is of great interest, showing as it does how deeply the King, Charles II., the Queen-mother, and the Court of Charles II. were implicated in the conspiracy set on foot by the Catholic Confederation to overturn the power of Cromwell in Ireland :—

“ Geoffrey Browne to Lord Clanricarde (Lord Deputy of the Duke of Ormond, Lord Lieutenant of Ireland).

“ Brussels, 7th September, 1651.

“ May it please your Excellency,—

“ Having come to sea out of Ireland, the 23rd of April, we landed not in this country till the 6th of June, according to the computation here, on which day in the evening we arrived in the river of Amsterdam, and the next morning we began our journey for this city, and came hither on the 12th of June, where, after a few days, we had audience with His Highness the Duke of Lorraine, and delivered our letters of credence and entered on a treaty according to our commission and instructions, and found, on debate, some alterations sought, different from the proceedings in Ireland; and howbeit there were here with Lord Taaffe some grounds that might encourage us to proceed, as your lordship will find by the copies of His Majesty's letters of the 21st of January last, and of the Duke of Ormond his letters of the 13th of March, both directed to Lord Taaffe, and here enclosed, yet to the end that nothing might be wanting, in pursuance of our instructions, we hastened your lordship's several letters to the Queen, to the Duke of York, and to the Duke of Ormond; and, upon debate amongst us, it was agreed that Lord Taaffe should repair to Paris with those letters, where then the Queen, the Duke of York, and the Duke of Ormond were.

“ On the 7th day of our coming hither, being the 19th of June, the Lord Taaffe began his journey to Paris, by whom we sent our instructions; the representation being signed by your lordship, importing the present state of the country, and all other the papers that might give Her Majesty and the rest the full knowledge of those affairs, and accompanied those with our letters to Her Majesty, to His Highness, and the Duke of Ormond. The copies of these our letters, for your lordship's better information, are also

here enclosed. And to avoid any loss of time in that matter, before we had a return from Paris, we prepared the affairs here with the Duke of Lorraine the best we could, and solicited him with all earnestness for some present aids of money and ammunition. Matters being thus in agitation here with us, we received Her Majesty's letters in answer of ours, whereof the enclosed is a copy, by which and what the Lord Taaffe represented, we were fully satisfied and encouraged to proceed to a conclusion of that affair."

The treaty concluded was signed by the Duke of Lorraine, Lord Taaffe, Plunkett, and Geoffrey Browne, on the 2nd of July, 1651,¹ whereby His Highness was declared Protector Royal of Ireland. He then advanced a sum of £15,000, and engaged to furnish, for the protection of Ireland, all such supplies of arms, money, ammunition, shipping, and provisions, as the necessity of the case might require; and, in return, the agents, in the name of the people and kingdom of Ireland, conferred upon him, his heirs, and successors, the title of Protector Royal, together with the chief civil authority and command of the forces, but under the obligation of restoring both, on the payment of his expenses, to Charles II., the rightful sovereign. After some delay, the treaty arrived in Ireland, and Lord Clanricarde read it with indignation; he asserted that Lord Taaffe, Sir Nicholas Plunkett, and Geoffrey Browne were for handing over the kingdom to a foreign prince, and had transgressed their instructions, and were traitors to the King. The overthrow of the royal cause at the battle of Worcester, on the 3rd of September, 1651, put an end to the negotiations, and nothing more was heard of the treaty with the Duke of Lorraine.

Browne then returned to Ireland, and was excepted by Cromwell's Act of Settlement in 1652 from pardon of life and estate, as also was Patrick Darcy. These two lawyers, partly because they were outlawed, and partly in common with all Catholics, because of their religion, were prevented from being engaged in the defence of those tried in Galway in the last-named year for the massacre of 1641. To Sir Charles Coote, President of the Connaught Presidency Court, were granted in 1652 the enormous estates, then declared to be confiscated, of the Marquis of Clanricarde, "said Sir Charles to

¹ "Clanricarde's Memoirs," Part ii., p. 34.

have the custody of Portumna Castle, together with its gardens, orchards, and parks, until the Parliament should dispose of them, the same to be kept in good repair, the store of deer to be preserved, and no timber to be felled or waste to be done other than for the repair of the castle, reserving liberty from time to time of convenient apartments for the accommodation of the chief governors of the kingdom, as often as they should have occasion to repair thither for the transaction of public affairs; Sir Charles Coote to give an inventory of what hangings and goods there were in the Castle."¹

A.D. 1652.—The revolutionary Government of the Commonwealth now turned to satisfy their claims for vengeance. In 1644 the Catholic nobility, as we have said, petitioned the King that an inquiry might be made into the murders alleged to have been perpetrated on each side in Ireland, and that justice might be executed on the offenders without difference of religion. The depositions taken on that commission were of the loosest description, and though the deponents were not subject to cross-examination, have ever since been regarded as evidence of the guilt of the parties charged with the massacres on the Bridge of Shruel, in 1641. Against Theobald Bourke, third Viscount Mayo, the fury of the Government was especially directed; a Protestant, he had been the pupil of the unfortunate Laud, Archbishop of Canterbury, who had then lately perished on the scaffold. The second Viscount was in early life a Protestant, but had become a Catholic, and was until his death, in 1649, a member of the Confederation of Kilkenny. He had been for a time one of the Supreme Council of that body. He was now dead, but death did not save his memory from the infamy sought to be cast on his name. Eleven years had passed without a trial, for, indeed, no judges went the Connaught Circuit, and no Assizes were held in those tumultuous times. But a new Court, called the High Court of Justice, was now—we speak of 1652—established.

Of the justice of the proceedings of this Court we have not the means of forming a satisfactory opinion; but the passions of men were too much excited, and the forms of proceeding too summary, to allow the judges to weigh with cool and cautious discrimination

¹ "Lodge's Peerage," Vol. i., p. 306.

the different cases which came before them. Sir Richard Bourke MacWilliam Oughter, in the reign of Edward VI., married a chieftainess, whose name is still mentioned in the traditions and songs of the country—Grana Uaile, in English Grace O'Malley. Their eldest son, Sir Theobald, was the first Viscount, and left by his wife four sons and three daughters, viz., Miles, the second Viscount, Daniel, Theobald the Strong, and Iron Dick; Mary, married O'Connor Don; Honora, married Ulick Burke, of Castle Hacket; and Margaret, married Theobald Burke, of Tourlough. The second Viscount was father of the accused.¹

TRIAL OF VISCOUNT MAYO FOR MURDER, A.D. 1652.

A Special Commission for Galway was issued, and directed to Sir Charles Coote, President of the Connaught Presidency Court, and to ten other Commissioners, all comparative strangers to the county, whose names were Peter Stubbers, Humphrey Hard, Francis Gore, John Desdorough, Thomas Davies, Robert Ormsby, Robert Clarke, Charles Holcroft, John Eyre, and Alexander Staples. And they were commissioned to try Lord Mayo for the wilful murder, and of being accessory to the murder, of divers persons on the Bridge of Shruel, in the County of Galway, on Sunday, the 13th of February, 1641-2. The ordinary forms were departed from, and the Commissioners acted both as judges and jurors in the matter. The case was opened in the County of Galway Court-house on the 31st December, 1652, and continued unto the 12th of January following.

Counsel appeared for the Commonwealth, and also for the accused.

Shruel is a small village, three miles from Headford, on the road from Castlebar to Galway, and situated on the Black River, which, running in its westerly course through the village, separates the Counties of Mayo and Galway. It was on the bridge that spans the river, and on the Galway side of it, that the massacre was perpetrated. About four miles down the stream, towards Lough Corrib, into which it falls, stands the stately Abbey of Ross, whose reverend guardian, then a great personage in the

¹ "Lodge's Peerage," tit. Viscount Mayo.

county,¹ acted so conspicuous and so humane a part in putting a stop to a massacre unsurpassed in horrors. A few were saved, and amongst them was Dr. Maxwell, Protestant Bishop of Killala, his wife, children, and servants, whom the reverend guardian succeeded in saving and sheltering in his Abbey. Miles Bourke, second Viscount, and father of the prisoner at the bar, was at that time, and all through his life, a firm supporter of the throne of Charles I., and had been jointly, with Lord Dillon, Governor of the County of Mayo. From the depositions of the Rev. John Goldsmith, it appeared that Lord Mayo's castle of Belcarra was the refuge of all the Protestant clergy of the county; that the Bishop of Killala, his wife, children, and servants, were also guests there, and continued to reside at that castle until it was provided that the English Protestant inhabitants of Castlebar should be permitted to march away with their arms, and be safely convoyed to Galway, Lord Mayo undertaking to accompany them as far as the Bridge of Shruel. The convoy left Castlebar on Tuesday, the 8th of February, but, contrary to the stipulations of the treaty, the English were deprived of their arms, and, on Saturday night, arrived at Shruel.

The number of Protestants who were being convoyed amounted to one hundred, and they were accompanied by five companies of soldiers for their security to Shruel, where two companies were to receive them over the bridge, being in the County of Galway. "The next day, being Sunday, the gentlemen of the barony of Kilmaine, in which barony Shruel is situated, finding themselves much burdened by the soldiers (having lain upon them four nights), entreated to be eased of them by sending them to their homes, for they had brought them to the end of the County of Mayo, where they were to be received by the companies of Ulick Burke, of Castle Hacket," High Sheriff of the County of Galway, and "who lay that night within two miles of Shruel, and appointed to meet the company at Kil-e-monough, about a mile from Shruel, on Sunday morning. Upon which earnest request of the gentry, Lord Mayo dismissed four of the five companies. His lordship having, according to the treaty, accompanied them to Shruel, and having

¹ "Clanricarde's Memoirs," p. 131.

seen the Bishop, his wife and children, and all those who had horses, mounted, took his leave of them, and returned at a sharp trot, the weather being very cold, towards Cong, intending to remain for his son," the prisoner at the bar. The party had just crossed the bridge, a shot was fired, and a massacre commenced. In less than an hour thirty bodies were laid dead on the ground, some were tumbled into a hole on the roadside, and others flung into the dark waters of the Black river that ran red with blood into the lake on that fatal day. "Lord Mayo was dismounting, when a messenger rode up at a gallop, and informed him that, after he was out of sight, the company of soldiers who wounded and stripped him, with his wife and children, murdered some, and were murdering the remainder. Whereupon his lordship went instantly into his chamber, and there wept bitterly, tearing his hair, and refusing to hear any manner of persuasion or comfort, or to be patient. Within half an hour came Sir Theobald Bourke, who, with tears in his eyes, related the tragedy, but could not certainly tell who was killed or who escaped; but being demanded by his father why he would ever come away, but either have preserved their lives or have died with them, answered that when they began the slaughter, they charged him (having his sword drawn against them) both with their pikes and muskets, and would have killed him, but that John Garvey, High Sheriff of the County of Mayo, who was brother-in-law of the principal murderer, came in between him and them, took him in his arms, and, by the assistance of others, forcibly carried him over the bridge, brought him a horse, and caused him to be gone after his father, for that he could there do no good, but would be killed or endangered if he opposed them; whereupon he came away. The next day his lordship, going to Cong, lay in bed two or three days without taking any sustenance." This narrative is confirmed by the depositions of the prisoner, Sir Theobald Bourke (then Lord Mayo), taken at Galway, 15th of November, 1652, a few weeks before the trial.¹

The numbers slain on the Bridge of Shruel have been variously estimated. Pierce Lynch, an eye-witness, speaks of one hundred, as appears from the following letter from Lord Clanricarde to Captain

¹ "Lodge's Peerage," Vol. ii., p. 335.

42 *MASSACRE OF THE BRIDGE OF SHRUEL.*

Willoughby, the Governor of St. Augustine's Fort, Galway, to whom the convoy was consigned :—

“ Portumna Castle,
“ Saturday, 19th Feby., 1641-2.

“ Captain Willoughby,—

“ I received yesterday a large relation of the inhuman and barbarous massacre of the poor English, from Pierce Lynch, my tenant at Shruel, who was an eye-witness of that cruelty being done upon and on each side of the bridge before the castle, the number of the English one hundred. He affirms that it was done by those in the County of Mayo, who, being before with my Lord Mayo, would fain have lodged within my castle, but neither entreaties nor threats could prevail; he also relates that the Bishop of Killala, his wife, and some of his company were preserved by Mr. Ulick Burke,¹ of Castle Hacket, who sent carriages to convey them to his castle, being sick and almost starved; and some others were kept alive in some other places thereabouts. If any of this county had a hand in that work, I shall hazard much to give them their due punishment. . . .

“ CLANRICARDE AND ST. ALBANS.”

The Bishop of Killala thus writes of his condition to the Marquis of Clanricarde :—

“ Castle Hacket, 18th February, 1641-2.

“ May it please your Lordship,

“ It may seem truly to be a presumption above an ordinary strain, that so unfortunate a wretch, in so poor and despicable a condition, should attempt to trouble your honour, in such a way as I am cast upon by an inevitable necessity; but the knowledge and confidence I have, that goodness attends insuperably your greatness, answerable to your honour's noble birth, worth, and breeding, consummated and made complete by that trust his Royal Majesty hath put on you in this county, hath emboldened me to cast myself at your honour's feet, and humbly to beg, for God's, the King's, and your honour's sake, to be a protector and benefactor to me, your humble suppliant. What my misfortunes and sufferings were on Sunday last at Shruel, as without tears I cannot, so with good manners I may not, relate to your lordship, only lest I should be ungrateful to God. I remember His mercies; first, that miraculously, of God's undeserved mercy, I, my wife, three children, two women-servants, and a man-servant, were preserved. I pray God it be in mercy. Next, though all stripped naked, yet none wounded but myself and my man-servant, and that, blessed be God, not deadly or dangerously; thirdly, which is a mercy above all, that a noble

¹ “ Clanricarde's Memoirs,” p. 37.

gentleman, Captain Ulick Burke, and his noble bed-fellow,¹ sent a surgeon² of his own to me and other servants, who, with all tender care, brought me on Tuesday to Castle Hacket,³ where I have been and am so tenderly and heartily attended, as it surpasseth all expression; I pray God that they may find mercy in the day of their need, and to enable me to be a servant to this family. To all these, I add the last, which encourageth me most, that God is dealing with me in mercy; that now I am under the shadow of your wings and protection of him who is known to be piously devout, generously noble, and most faithfully loyal. Let me then humbly supplicate your lordship that you would compassionate a poor, miserable, yet innocent man, provide for him and his safe convoy to Galway, or anywhere else you think fit, from whence I may be transported by sea to see King Charles, the thing worldly I wish most, not in the word of a priest to complain, for God's grace and my afflictions here and elsewhere have taught me to forgive and pray for them that wrong me. Next, I beg (alas! I am ashamed to express, but necessity exporteth it) that you would be pleased to help me with some money to supply me and mine. My lord, I dare to promise, however I be low here and not much known, yet I am neither so much forgotten by my gracious Sovereign, nor undervalued for my past service to and suffering for him, but what your lordship shall expend, either for my conduct or support, shall not only be well taken, but wholly repaid and rewarded. I could say more in this kind, but modesty and my poor condition commands my silence. Would God I were as well known to your lordship as to some of your noble friends at Court, or at least as near to them in place as to your lordship. My lord, pardon my expressions in this case. I thank God it is the first of this kind, and I must forbear, for many reasons, to enlarge myself in this subject. Closing with begging humble pardon for my unmannerly, importunate boldness, and praying God Almighty to keep you long alive for his Majesty's service, and for the encrease of honour upon your noble family. These are, and ever shall be, the fervent and constant prayer of, my lord, your honour's daily orator, humble suppliant, and devoted servant,

“J^o. ROSSENSIN.⁴”

“P.S.—May it please your lordship to do me the honour to understand, by two lines from any of your lordship's servants, your lordship's pleasure.”

¹ This noble bed-fellow was the Honourable Honora Bourke, daughter of Lord (Viscount) Mayo.

² The Castle Hacket Surgeon, Dr. Jameson, then lived at Ower, near Headford.

³ From Sunday, 13th February, to Tuesday, the 15th, the Bishop was, with his family, entertained at the Abbey of Ross; the Prior being Father Bryan, Kilkenny.

⁴ The reason why the Bishop signs his name as Rossensin is that he was Bishop of Ross in Scotland; his patent had not as yet been made out for his new See of Killala, to which he had been just translated from Ross. It is not unworthy of observation that it was in an Abbey of Ross he now found shelter.

“Immediately upon receipt of this letter,” writes the Marquis of Clanricarde to the Lords Justices, “I wrote to Mr. Ulick Burke, commending his fair carriage and respect to my Lord of Killala, and earnestly pressed the continuance of it.”—21st Feb., 1641-2.

On the 19th March, 1641-2, Lord Clanricarde thus writes to the Lords Justices concerning the massacre:—

“The Bishop of Killala, his wife and children, escaped happily with their lives, being stripped, and the bishop hurt. Mr. Ulick Burke, of Castle Hacket, relieved them, and kept them with much care and respect a long time at his house, and after my directions conveyed them (7th March), safe to Galway, when I was there. Your lordship’s humble servant,

“CLANRICARDE AND ST. ALBANS.”

Eight months after the fatal affray, Lord Clanricarde proceeded to Shrueel to visit the place. The following is from the Memoirs of his lordship:—

“Upon the 27th of November, 1642, I went from Tuam to Shrueel, a fair stronge castle of my own in the County of Mayo, but divided from this county by the riyer, upon which is a fair stronge bridge, made most infamous by the horrid and bloody massacre of about one hundred English and Scots, most of them massacred by their own convoys. Out of the inhuman massacre very strangely escaped Maxwell, Lord Bishop of Killala, and his wife and children. He was stripped and dangerously wounded, and at last found and releevd by Mr. Ulick Burke, of Castle Hacket, being within the county upon those borders, and there he was carefully attended until he was able to travel; and I sent a convoy to wait upon him to Galway, where I shewed him the best respects.”

The prisoner’s defence, as given in Cox,¹ was that “he was not in command of the convoy, and that he and his servants had only come to attend his father; that on the cry of murder being raised, he rushed over the bridge and drew his sword, with a view to protect the English; but being fired at by one of the murderers, he got a horse, having actually lent his own to the Bishop of Killala to make his escape, and rode away before the murder was committed; and that if he had not fled, he must have been killed himself; that he had been always kind to the English, and preserved many of them both before and after that time; and further, that the Bishop of Killala had declared to him, that he believed

¹ “History of Ireland” by Sir Richard Cox, Lord High Chancellor of Ireland, A. D. 1703.

that this transaction (the massacre) was done in spite of the prisoner. Doctor Maxwell could not then be examined, for having been made Archbishop of Tuam, he died in 1645, but, by letter, he acknowledged his civility to himself." The acts of kindness which the prisoner and his father had done towards the English are narrated by Henry Bingham in his depositions, which were confirmed by the prisoner in his affidavit, made, as we have said, on the 15th of November, a few weeks before the trial, with a view to show that neither the prisoner nor his father had any animosity to the English settlers.

The prisoner's counsel, having commented on the total absence of evidence to connect him with the massacre, called for an acquittal. Counsel for the Commonwealth replied, and the Court divided, when it was found that they were not unanimous; that seven—Sir Charles Coote, Peter Stubbers, Humphrey Hurd, John Desborough, Robert Ormsby, John Eyre, and Alexander Staples—were for a conviction; and four—Francis Gore, Thomas Davis, Robert Clerk, and Charles Holcroft—were for an acquittal. The President, Sir Charles Coote, then passed sentence of death upon him, and the unfortunate nobleman was executed on the 15th of January, in Galway, where he was buried. It is mentioned by Lodge, that "the soldiers appointed to shoot him missed him three times, but at last a corporal, blind of an eye, hit him." His estates of fifty thousand acres and five manors were then seized by the Government, and his orphan child allowed a miserable pittance of £30 a-year. Thus perished Theobald, third Viscount Mayo, on evidence which should have acquitted him—evidence which influenced four of his judges to pronounce him not guilty; and we read with satisfaction that others have denounced that trial as a mockery upon the forms of justice.¹ That a dreadful massacre took place, which not even the cruelties of the English² could justify, there can be no doubt; but that Lord Mayo or his father was in the remotest degree connected with that massacre it is absurd to suppose. Although Miles, the second Viscount, had joined the Church of Rome, yet his wife was a Protestant, his

¹ Froude's "English in Ireland," Vol. i., pp. 80-86.

² Leland's "History of Ireland," Vol. iii., p. 394.

unfortunate son was a Protestant, and he was the nobleman who had sheltered the Protestant clergy who were flying from one end of the county to the other. Lord Mayo was, perhaps, wrong in not accompanying the convoy to Kil-e-monough; but if he had erred in not doing so, his son, whose trial we have just told, was unable to stay the effusion of blood. It required the influence of the aged Prior of Ross Abbey to do so. That the Government of the Restoration did not believe him guilty of having part in this atrocious murder is manifested by the fact that Charles II. at once restored the fourth Viscount, in 1661, to the enormous estates confiscated by the Commonwealth.

A.D. 1654.—Other courts were now established in the Province of Connaught. The Court of Claims sat at the Castle of Athlone, a Court which had been established by force of an Act passed during the Protectorate of Oliver Cromwell, by Parliament sitting at Westminster, 1652, for the new planting of Ireland with English.¹ (*Vide infra*, Appendix.) All Ireland was thereby declared to be forfeited, and the three Provinces, Leinster, Ulster, and Munster, were to “be weeded of the Popish proprietors,” and they, not the peasantry, were to be transplanted. Connaught, which then comprehended Clare, was selected for their habitation by reason of its being surrounded by the sea on the one side and the Shannon on the other, all but ten miles in the County Leitrim, which could be easily protected, and the whole easily made into one line by a few forts. To secure their imprisonment, and cut them off from relief by land and sea, a belt of a mile wide, called the mile line, commenced at Sligo, and sweeping round by the coast and Shannon, was reserved for plantation by the soldiery. To Connaught all the Irish proprietors were to remove at latest, under the penalty of death, on the 1st May, 1654. Thereupon applications, numbers without number, were made seeking dispensations, “so that the commissioners were overwhelmed with them.” From the remotest parts of Leinster, Ulster, and Munster, the exodus commenced; and in the depth of winter the transplanted were hunted from their homes into Connaught. Arrests, trials, and deaths were numerous. Mr. Edward Hetherington, of Kilnema-

¹ Prendergast’s “Cromwellian Settlement,” p. 93.

nagh, tried by court-martial sitting in St. Patrick's Cathedral, Dublin, was hanged on the 3rd of April, 1655, with placards on his breast and back, "for not transplanting." The transplanted were to present to the Commissioners of Revenue inventories, setting forth the quantity of tillage they were leaving, and the number and names of persons in their families, in order that they (the commissioners) might set them out lands competent to the stock that they were bringing from their confiscated homes into Connaught.

Unable to compete with the press of business, special Commissioners were directed to sit at Loughrea, and thenceforth were known as the Loughrea Commissioners—being "William Edwards, Edward Doyly, Charles Holcroft, and Henry Greenoway, Esquires,"¹ for the setting out of lands in Connaught to the transplanted Irish, who are to remove thither before the 1st of May, 1654."

It is easy to conceive the feelings of the Connaught Catholic proprietor, on finding himself and his family turned out of his ancient home, to make way for the Ulster Catholic transplanter, armed with an assignment from the Commissioners at Loughrea, who, however, did not proceed to allotment until the Court of Claims discriminated their qualifications, and ascertained the size of the lands they had just then forfeited. The Parliamentary Government caused a survey of the entire island to be made and laid "down" to a scale, whence its name, "The Down Survey." It filled thirty-one folio volumes, which in the year 1711 were in great part destroyed by a fire which took place in a house in Essex-street, where the Surveyor-General's office was then kept. We must regret, also, the loss on that occasion of the proceedings of the Court of Claims and Qualifications at Athlone.² In order to supply the deficiencies occasioned by the fire, General Vallancey, by command of George III., and with the permission of the King of France, was employed to take copies from a set of barony maps of the Down Survey, which had been captured by a French privateer on the passage from Ireland to England, and deposited in the Royal Library, Paris. Owing to the fire, the proceedings of this Court of *Justice* are but little known. Without much ceremony the

¹ Prendergast's "Cromwellian Settlement," p. 147.

² Morrin's Pat. Rot., Preface, xviii.

lands were confiscated, the ancient proprietors displaced, and the strangers granted their inheritance. Of such was the following case.

In re the Estate of Burke, of Castle Hacket, heard in Athlone in the month of May, 1656, when counsel appeared for the unfortunate proprietor, whose title to his vast estates reached back to the year 1179, when William FitzAdlem DeBurgh was granted, by patent, the several quarters now confiscated. The castle of Castle Hacket, as the name imports, was built by a person named Hacket,¹ a follower of the De Burghs, who accompanied Richard the Red Earl of Ulster on an expedition against Bruce of Scotland. From William FitzAdlem the estates descended to his descendant Ulick, who died at Castle Hacket in 1419. In 1584 a Commission, by command of Queen Elizabeth, issued, directed to John Creston, Escheator-General, to hold Courts of Inquiry in the Province of Connaught, as to the titles of the several proprietors, and he, on the 29th of January in that year, caused a jury to be empannelled in the town of Galway, and they being sworn found on their oaths² :—

“That Ulick (Burke) M'Redmund Mac Moiler, of Castle Hacket, in the County of Galway, died on the 27th of September, 1571, and the 13th year of the reign of our Lady Elizabeth ; also the aforesaid jurors upon their oath say, that the said Ulick M'Redmund upon the day upon which he died, with others of his race, was seized in his demesne, as of fee, of the stone castles or curtillages called Castle Hacket and Cahermorris, and of twenty-seven quarters of land of every kind, with their appurtenances, called the lands of yellow John M'Redmund, in the country of Moynter-Morgho, in the County of Galway. But they say that said Ulick, as the principal of his race, had precedence over the rest during his life, and that he wiped away and imposed all the burdens on the said lands at his own pleasure ; and they say that the aforesaid castles, called Castle Hacket and Cahermorris, with twenty-seven quarters of land aforesaid, with their appurtenances, were held of our Lady the Queen, but by what service they are entirely ignorant. The said jurors also on their oaths say that the said Ulick M'Redmund begat from his wife, Catharine M'Redmund, a son named yellow John M'Redmund, who claims the said castles and lands for himself by right of heirship, as the eldest son and heir of Ulick M'Redmund ; and they say that said yellow John M'Redmund was thirteen years

¹ “O'Flaherty's Iar Connaught, p. 148.” “Calendar of Pat. Rolls,” 31 Edw. I., No. 21 ; 3 and 4 Edw. II., No. 127.

² “Inquisitions of 1584, Co. Galway.”

of age at the time of the death of his said father. Moreover, the said jurors on their oaths say, that the Lord Count Clanricarde claims an annual rent of twenty marks sterling on the entire of Moynter-Morgho (now barony of Clare), of which country the aforesaid lands form a part, but whether duly and of right the said Count claims the same, the said jurors are ignorant.

“THOMAS CRESTON, *Escheator*.”

A.D. 1585.

This verdict was followed by the deed of composition, whereby her Majesty, by the Lord Deputy, Sir John Perrott, granted to said John Buy M'Redmund the estates in fee-simple, to descend according to English law. In 1619, James I. confirmed by patent¹ those identical lands to Ulick Burke, eldest son of John Burke, and his heirs.

Ulick died 1655, and was succeeded by his eldest son, John, for whom counsel now appeared. One would have thought that the shelter afforded to the Bishop of Killala, on the fatal day at Shruel, should have protected the Burkes in their hour of trial; but all was forgotten, and on the 21st of June, 1656, the Court made a decree adjudging that John Burke was to enjoy a fractional part of his territory, which was determined by the decree of the Commissioners sitting at Loughrea, as follows:—

“By the Commissioners for setting out lands to the Irish in the Province of Connaught.

¹ “Grant from the King to Ulick Burke FitzJohn, of Castle Hacket, Gent., Galway County, Clare Barony. The castle, town, and lands of Castle Hacket, $3\frac{1}{2}$ qrs.; Carrowcam, 1 qr.; Caldragh, $\frac{1}{2}$ qr.; Tarrataxtan, $\frac{1}{2}$ qr.; Skenagh, $\frac{1}{2}$ qr.; Kildrume, 2 qrs.; Manuflyn, 2 qrs.; Carrowkeeleeghsthanboy, 1 qr.; Annaghkeene, 2 qrs.; Ower, 2 qrs.; Tobbercrussawn, 1 qr.; Elly, 1 qr.; Ballyconlagh, $\frac{1}{2}$ qr.; Killarie, 1 qr.; Croughbuolly, 1 qr.; Cahermacenally, 1 qr. [Then follows grant of a cartron of land, quarters, $\frac{1}{2}$ quarters, and fractional parts of $\frac{1}{2}$ quarters, such as $\frac{1}{8}$ th of 30 half quarters of Ballaghicarda and other unspellable and unpronounceable names, and extending over an area of many square miles.] “The premises are created the Manor of Castle Hacket, with six hundred acres in demesne, power to create tenures, to hold a fair at Castle Hacket on St. Matthew’s Day, 21st September, and two days following, unless that day occurs on a Friday, Saturday, or Sunday, in which case the fair shall be held on Monday, Tuesday, or Wednesday following, with a court of *pie-poudre*, and the usual tolls rent, ten shillings, to hold to Riccard, Earl of Clanricarde, and his heirs, by the fortieth part of a knight’s fee, as appears by an Inquisition taken at Athenry on the 11th September, 1617.” [Patent Rolls, 1619.]

"In pursuance of the decree of the Commissioners for the adjudication of claims and qualifications of the Irish granted in the behalf of John Burke, of Castle Hacket, in the County of Galway, whereby he is adjudged to have and enjoy two-thirds part of his estates by virtue of the eighth qualification, in which he is comprised, and one-third part of his estate in mortgage by virtue of the seventh qualification, in which he is included. It is ordered that John Burke be and he is hereby empowered to enter and take possession of the lands ensuing, viz., the two quarters of OWER, and other quarters hereon endorsed, to have, hold, and enjoy several the premises, with all the houses, hereditaments, gardens, orchards, and all improvements and appurtenances whatsoever, and the rents, issues, and profits thereto belonging, in full satisfaction of his estate, according to his decree to him, his heirs, and assigns, for ever; and the High Sheriff of the said county, or his Deputy, is hereby authorised and required to put the said John Burke, or his assigns, into quiet and actual possession of the premises. Dated at Loughrea, the 1st September, 1657.

"CHARLES HOLCROFT.

"HENRY GREENWAY."

A portion of the Castle Hacket estate was then bestowed on a Catholic, Sir Patrick Barnewall, resident in and transported from the County of Dublin. The residue thereof was parcelled out to Protestants, Sir Edward Ormsby, Lord Collooney, and Sir Oliver St. George.¹ The costs which the unhappy proprietor, who was married to a daughter of Lord Athenry, incurred in rescuing from destruction the remnant of his estate, and in removing to Ower, was £200, equivalent to £1600 present value. The Barnewalls appear to have been transplanted much against their will. They had petitioned against being transplanted, but to no purpose; and the strict imprisonment of the transplanted in Connaught may be estimated, when it required a special order for Sir Patrick Barnewall, and others, to repass the bridge of Athlone into the Leinster side on their private business, and only on their giving security that they would not go outside the limits of the town. The miseries suffered by the dispossessed Connaught proprietors were equalled by those of the transplanted, who were compelled to travel mostly on foot, from the remotest parts of Ireland to the bridge of Athlone, and once in Connaught were assailed by those whose estates they were obtruded into. The horror with which the

¹ "Book of Survey and Distributions."

transplanted regarded the transplantation may be gathered from the following.

In re the Estate of Thomas Toomey and others, heard in the Court-house of Mallow, on Saturday, 30th August, 1656, the Judges being the infamous Cook, of the Upper Bench (previously King's Bench), who had been solicitor for the Commons on the trial of Charles I., and Mr. Justice Halsey.

Messrs. Silver and Hoare (instructed by Fisher, Jones, and Barber, Solicitors) appeared for the claimants.

From the statement of counsel, it appeared that the claimant Toomey owned a house in Kinsale, under a lease made in 1635. He was a shipwright, and worked in the King's dockyard there. It was proved that he shut the gates against the Irish in 1641, that he served as a corporal under Captain John Farlo, that he kept watch and ward when the rebels besieged the town. It came out, however, that after Inchiquin revolted from the Parliament in 1649, and returned to the king's side, contribution was collected by the magistrates, and paid by Toomey and all the other inhabitants of Kinsale to the king's receivers. This act deprived the claimant of the plea of constant good affection, which counsel for the Commonwealth insisted took them out of the ninth and brought them under the eighth qualification.

Mr. Silver, for Toomey, asked that judgment, upon the point of "constant good affection," be entered for him.

MR. JUSTICE COOK.—"Negative."

MR. JUSTICE HALSEY.—"Negative."

Their lordships made then the following order:—"It is adjudged that Mr. Thomas Toomey hath not manifested 'constant good affection,' but falls within the eighth qualification; he is to have two parts of his estate in Connaught. Let counsel for Thomas Toomey proceed upon his title."

MR. SILVER.—"He is resolved not to go into Connaught."

MR. HOARE, counsel for several other claimants.—"And so are all my clients; and we ask the judgment of the Court as to whether they, and how many of them, have proved their constant good affections." (Naming twelve of them.)

COURT.—“ We have considered the several causes of every claimant in Court, and have singled out about thirty which may come nearest to constant good affection. And we cannot find that any of them hath manifested constant good affection according to the strict rule of law, but all fall short in some point or other.”

CLAIMANTS' COUNSEL.—“ Our clients are resolved not to take any lands in Connaught.”

COURT.—“ They must transplant according to law.”

The claimants here made a noise, some of them saying, “ that they had rather go to Barbadoes than into Connaught.”

The lands forfeited were subjected to a new annual imposition, to which they are yet liable, called Quit Rent, being three half-pence an acre in Connaught. This species of rent is distinguishable from Crown Rents, which were the rents formerly paid by tenants of the religious houses to the abbots and priors, and which, by the statutes 28 and 33 Henry VIII., chapters 16 and 6, became and were thenceforward payable to the Crown. Consequently lands not held of the monasteries do not pay Crown Rent.

A.D. 1660.—Immediately on the Restoration in 1660, Charles II. promoted Sir James Donelan to be Chief Justice of the Common Pleas in Dublin; while in the same year, Charles Coote, the President of the Connaught Presidency Court, was raised to the peerage, with the title of Earl of Mountrath. The instructions given to him on this occasion are worthy of being preserved, pointing as they do to the jurisdiction of the Presidency Court of Connaught at the period of the Restoration.

“ INSTRUCTIONS by the King to our right trusty and well-beloved cousin and counsellor, Charles, Earl of Mountrath, our President of our Province of Connaught, in our Kingdom of Ireland. We have, under a commission under our Great Seal, constituted you our President of our Province of Connaught, diligently to hear and determine by the advice and assistance of our counsel there, or any two of them, all civil actions, as well real as personal, and all suits and controversies whatsoever betwix party and party, and shall punish all such offences and misdemeanors in such manner and form, and according to such process and processes, by fine and imprisonment and corporal punishment, as had or might formerly be lawfully used in the time and during the government of Richard, Earl of Clanricarde, Ulick, Earl of Clanricarde, or Charles, Lord Ranelagh, formerly Lord President of that province.

“ You shall keep a jail delivery at all times when you shall see cause within the said province, and therein take cognizance of all treasons, felonies, and other criminal offences whatsoever, and proceed to the execution of all traytors, felons, and other delinquents, or otherwise punish them according to the laws of Ireland, in such manner and form as the justices of jail delivery or former Presidents of our province might or used to do.

“ You shall cause the oath of allegiance to be administered to all our subjects inhabiting that province, and proceed according to law against such as refuse the same. Given at our Council at Whitehall, 17 March, 1660, and in the 13th year of our raigne.”

Then follow the names of the Privy Council of Connaught, viz., Sir James Donelan, Chief Justice; the Archbishop of Tuam; the Bishops of Elphin and Killala; Lords Ranelagh and Collooney; Sirs Robert Hanny, George Bingham, Oliver St. George, Robert Law, and Edward Crofton, Baronets; Arthur Gore, Francis Garvey, Robert Parker, George St. George, Henry Waddington, and Robert Morgan, Esquires.

Lord Mountrath had now been President of Connaught for sixteen years. He had served under the Commonwealth, and had fought against the Crown, and the Second Charles rewarded his long hostility and his sudden conversion by heaping honours upon him. But he did not long enjoy those honours; he died on the 18th of December, 1660, and was interred in St. Patrick's Cathedral. His successor was Lord Berkley, a nobleman of upright intentions and moderate principles. His patent is dated 13th of January, 1661. The judges once more commenced to go, as in times previous to 1641, the Connaught Circuit, and with regularity, twice a-year; but those barristers who before the rebellion practised there had one by one fallen away. Thomas Lynch FitzMarcus was gone; so were John Blake, and Robert Clarke, and Geoffrey Browne. But Patrick D'Arcy still was there. We have followed him in his career, and admired him as a leader of the bar; but he now, in his sixty-second year, crosses our path, and in a widely different character—as a second in a threatened duel, and between two of the judges. It appears that amongst the early acts of Charles II., on his restoration in 1660, was the appointment of the justices of the Superior Courts, and amongst them were Sir Jerome Alexander, second Justice of the Common Pleas, and Sir William Aston, second Justice of the King's Bench, and

they had a curious quarrel about precedence. The king's letter for the latter bears an earlier date than that of Sir Jerome. Their patents passed on the same day, and both were sworn together.

Sir Jerome was of longer standing in the English Inns of Court, and published his view of the case in a guarded, polite, and learned manner, with his name annexed thereto. To this an anonymous and libellous answer was given. It was imputed to Sir William, as his side of the question was not only vindicated, but some presumed conversation between those legal disputants introduced and animadverted upon. Patrick D'Arcy was sent by Sir Jerome to demand an explanation, and a regular challenge succeeded, on Sir William's refusal to make the slightest concession, or even to explain the fact. Though Aston figured as a colonel during the then late usurpation, he now showed "the white feather," declined the combat, and applied for a criminal information against D'Arcy. This application was refused by Aston's brethren, the learned Judges of the King's Bench, Chief Justice Barry and Mr. Justice Stockton, on the ground that Sir William did not deny in his affidavit that he wrote the libel, or was privy to the publication. Thus the breach was drawn wider, and Aston had now to contend with a widely different antagonist, Patrick D'Arcy, who threatened to horsewhip his lordship the first moment they met, and thereupon Sir William disappeared from Irish society, and did not return for eight years, until he learnt that D'Arcy was dead, and that no champion awaited his return to chastise him. This singular event operated like a patent of indemnity for duels. The king, notwithstanding his contempt for the cowardly libeller, resolved to remove both from the Bench, and was with difficulty prevailed upon to withhold such just resentment. Sir Jerome was a man of strong passion, but great integrity and known public spirit. He left his library, amongst other bounties, to Trinity College, Dublin.

D'Arcy's name frequently is to be met with in pleadings in Connaught cases. He went circuit regularly, and practised before the Chief Justice of the Common Pleas, Sir James Donelan, who was invariably one of the Connaught Judges of Assize with Oliver Jones, then Chief Justice of that Province. In 1665 Sir James

died, and it is said in the *Liber Munerum Hiberniæ* that he was interred in St. Michan's Church, Dublin. No such entry, however, exists in the lists of interments in that sacred building; and it appears far more probable that his remains were laid in Christ Church Cathedral, where his wife, who was a Miss Browne, of Coolarne, in the County of Galway, was afterwards buried. Sir James Donelan left at his decease a son, Loughlin Donelan, father of Nehemiah Donelan, who in his turn became a leader on the Connaught Circuit, and was Recorder of Galway from 1691 to 1694. He represented Galway from 1692 to 1695, was made Prime Sergeant in 1693, and in 1695 Chief Baron of the Court of Exchequer. The picture of this distinguished judge, as well as that of his grandfather, are in the possession of his descendant, Dermot O'Connor Donelan, J.P., nephew of the writer of these pages, of Sylane, near Tuam. They are dressed, the one as Chief Justice, in the scarlet robe and black cap, then (1665) worn by the members of the Bench, and the other as Chief Baron, in the black gown with the wig and bands, then (1706) introduced for the first time as the dress alike of judges and of lawyers. Patrick D'Arcy died in 1668, and was interred in the Abbey of Kilconnell, near Aughrim,¹ in the County of Galway.

The year 1672 is memorable in the annals of Connaught as being the last year of the Presidency Court of Connaught; its last Chief Justice being William Spring, and its last Second Justice, Sir Ellis Leighlin.

¹ Harris' "Irish Writers."

CHAPTER IV.

A.D. 1673.



THE abolition of the Connaught Presidency Court, which for the space of 103 years had held its sittings at Athlone, was followed by the immediate departure of the officials and professional men practising in that Court to the Superior Courts in Dublin. Here the rivalry awaited them of men whose professional labours would one day be rewarded by those honours from which the great majority of the Connaught lawyers, as far as we have been enabled to gather, were, being Roman Catholics, excluded. And yet the Connaught lawyers were in no way inferior to their brethren of the Superior Courts. We have seen how Patrick D'Arcy, and Lucas Dillon, and Geoffrey Browne fulfilled the trusts reposed in them ; how they fought for the altar and the throne ; and how, when the throne had fallen, they were still faithful to the prince whose power they sought to re-establish. These men, indeed, were now gone, but their places were filled by others, who, not inferior in ability, followed in their footsteps. Such were Peter Martyn, of Kilconnell (of the family of the Martyns, of Tullyra, in the County of Galway), who, in after years, ascended the Bench, and John Browne, of Westport, younger son of Sir John Browne, of the Neale, Bart. (ancestor of the Marquess of Sligo), whose name, together with the names of Sir Toby Butler, and Gerald Dillon, shall live on in the history of their country so long as the Treaty of Limerick is remembered. Such, too, were Sir Henry Lynch, of Castle Carra, and Thomas Lynch FitzIsidore, and the Right Honourable Denis Daly, of Carrownakelly. These men were Catholics. Nor was the Protestant faith unrepresented. Protestant

barristers of great eloquence had practised in the Connaught Provincial Court. There were Nehemiah Donelan (afterwards Chief Baron of the Court of Exchequer, grandson of Chief Justice Sir James Donelan), and Robert Ormsby. During the entire reign of Charles II. the Catholic lawyers went to the foremost ranks of the bar, though preferment for them was an impossibility. The temper of the English people, indeed, would not permit the Crown to raise to the Bench men who, according to the Scriptural phraseology of those days, were deceived "by the enchantments of the Church of Rome." But deeper still than their hatred to that Church lay a feeling of uneasiness lest, if Catholic lawyers were raised to the Bench, the Act of Settlement, which it was supposed had secured the settlers in their estates, would become, as it were, a nullity. It was, indeed, on the very point of becoming a nullity even under the Court of Claims. By the Act of Settlement (1662), the "nocence" or the "innocence" of the Catholic claimants was to have been inquired into by this Court. English Protestant lawyers of great eminence, and who were above suspicion, were named in the commission, and they held their sittings at the King's Inns¹ in Dublin. In the first session, 187 Catholics presented petitions to be restored to their estates, and, to the consternation of the Protestant interest, 168 of these claims were allowed, and 19 rejected. Forthwith the Act of Explanation was hurried through both Houses of Parliament, the court was closed, and on the day of its closing 3,000 claims were left unheard, and the last hope of the Catholic proprietors of the soil was extinguished for ever. From that time to the present the great bulk of the Irish landlords has been Protestant.

A.D. 1685.—The accession of James II. brought brighter hopes to the great majority of the Connaught bar. Their faith was no longer to be in the way of their advancement, and accordingly we find among the first appointments to the Bench the following Catholics:—Thomas Nugent, of Pallas, in the County of Galway, second son of the Earl of Westmeath. On the 15th of October, 1687, he succeeded Richard Pyne as Chief

¹ The ancient priory of St. Dominic, where the Four Courts now stand on the Inns Quay.

Justice of the Court of King's Bench, and, by patent of the 3rd of April, 1689, was created Baron Nugent, of Riverston, in Westmeath; but his title having been conferred after the king was declared to have abdicated, it was never, after the Revolution, recognized. On the 6th of July, 1689, he was appointed a Commissioner of the Treasury in Ireland, as he was again on the 17th of June, 1690, but "was afterwards outlawed for being engaged in rebellion against King William." The family of Thomas Nugent have long been settled at Pallas, in the County of Galway, and their representative has acquired, in recent years, by the death of the last of the elder branch of the Nugents, the ancient coronet of the Earls of Westmeath.

The next appointment was that of Denis Daly, of Carrowna-kelly, in the County of Galway, ancestor of Lord Dunsandle, a lawyer in great practice, and described by Lord Clarendon as "perfect Irish of the old race, very bigoted and national." He was made second Justice of the Court of Common Pleas. We are told that he continued to fill this office at the Revolution, and with such impartiality and integrity in those arduous times as added lustre to his judicial character.

Peter Martyn, of Kilconnell, also in the County of Galway, ancestor of the Martyns of Tullyra, and a member of one of the families which composed the fourteen tribes of Galway, was appointed third Justice of the Court of Common Pleas. He is said to have been of a remarkably humorous character, and in the last generation many amusing anecdotes concerning him were preserved. Seven of the Martyns were outlawed after the Revolution for having been adherents of King James. Amongst them was the Judge of whom we speak, whose property, the grand old Abbey of Kilconnell, with its precincts and possessions, was vested in the Crown. His Galway estates were purchased from the Commissioners of Forfeited Estates in 1703, by the Rev. John Trench, Dean of Raphoe, from whom the present Lord Ashtown is descended.

Sir Henry Lynch, ancestor of Sir Robert Lynch Blosse, of Athavallie, in the County of Mayo, said to have been a lawyer of great eminence, was appointed one of the Barons of the Exchequer in 1689. He was son of Sir Robert Lynch, also a lawyer in practice on the Connaught Circuit, and who, we omitted to state,

was "resident counsel of Connaught" during the great rebellion. Sir Henry resigned his seat on the bench in 1691, and accompanied James II. to France, where he died at Brest in the same year.

There were at that time several other Connaught barristers of high distinction, who could not, of course, have been provided for at the moment with seats on the Bench.

Indeed, it appears that the Bench was not at that time considered a prize to men in the highest practice at the bar. Thus Lord Clarendon, when Lord Lieutenant, writing to the Earl of Sunderland, in reference to filling a vacancy on the Irish Bench, says, "There are Gerald Dillon (of Roscommon), Mr. Nagle, and Mr. Browne; these three are Roman Catholics. Mr. Nagle, I know, has no mind to be a judge, nor, I believe, will Mr. Dillon, he being in very great practice; he is a very honest gentleman, and it is not fit for me to omit the best men."¹

Dillon, who appears to have been satisfied with honours rather than emoluments, was appointed in 1685 Recorder of Dublin, and Prime Serjeant. He was seised in fee of several estates in the Counties of Mayo and Roscommon, which he devised in 1690 to Theobald, his then only son in tail-male, with remainders over; but he was himself attainted in 1691. Devoted to the throne of James II., Dillon and many Catholic barristers took commissions in the Irish army when the fortunes of their sovereign were in the scale; and we find the Prime Serjeant colonel of one of these regiments raised in the cause of their fugitive king. Following King James to France, Dillon thenceforward resided in that country, where he died in a few years, honoured for his integrity, his learning, his eloquence, and his worth.²

John Browne, ancestor of the Marquess of Sligo, second son of Sir John Browne, of the Neale, Bart., also a Catholic, was in high practice at the bar; but his turn for promotion had not come when the last of the Stuarts ceased to reign in Ireland. He changed the long robe for the soldier's uniform; became a colonel in the Irish army; fought at the siege of Limerick; and was, as we have said, associated with Sir Toby Butler and Colonel the Prime

¹ Singer's "Correspondence," Vol. ii., p. 122.

² Dalton's "King James's Army List," Vol. ii., pp. 249, 250.

Serjeant Dillon in drafting the celebrated treaty to which Limerick gives its name. Dying in Dublin, in 1705, he was succeeded by his son, Peter Browne, who was married to a daughter of the Right Hon. Denis Daly, the above-mentioned Justice of the Court of Common Pleas.

Peter Daly, of Quansborough, in the County of Galway (whose daughter, Margaret, was married to Thomas Bermingham, the twenty-second Lord Athenry), was also a Catholic barrister, and in high practice on the Connaught Circuit, where he was long remembered for his wisdom and eloquence, which won for him, strange to say, the sobriquet of "Peter the Fool." In King James's distribution of professional honours, he does not appear to have attained any distinction.

Sir Theobald Butler, better known as Sir Toby Butler, was a native of the County of Clare, then on the Connaught Circuit. He was descended from a junior branch of the house of Ormond, and was ancestor of the Butlers of Ballyline, now represented by Augustus Fitzgerald Butler, J.P., D.L., in the County of Clare. The early days of this great lawyer were spent in the solitudes of Doon, on the confines of the Counties of Galway and Clare, and about a mile from the picturesque valley of Bunnahow. On the 9th of September, 1671, he entered the Inner Temple, and is there described as of Shanagollen, in the County of Clare. He was called to the Irish Bar in 1676, and soon rose into high practice at his profession. In 1678 he was counsel in the great Chancery Cause of *O'Shaughnessy v. Lord Clare*. In 1680 he added to his family estate by the purchase of the lands of Carrowkeah. On the 25th of July, 1689, he was appointed Solicitor-General for Ireland, and was elected representative for the borough of Ennis in the Parliament which was held in Dublin in that year. Many anecdotes are told of Sir Toby, not alone of his power as an advocate, but of his great social qualities, which endeared him to all sorts and conditions of men. Judges and lawyers in those times, when wheel carriages were almost unknown, were wont to ride from assize town to assize town on horseback. Mounted on a superb charger, Sir Toby was followed by his clerk, Owen Gar, and his valet, Phelim Crena, also on horseback; the former carrying his briefs and Circuit library, and

the latter his wardrobe, while at his own saddle-bow were several bottles of claret. He was wont to make easy stages round the Circuit, feeling quite at home at every house that chanced to stand on his line of march at sunset. His fame as a lawyer was wide-spread; he was negligent in his dress, and was noted for his love of the juice of the grape which, strange to say, had not to the same extent an effect on him as on other men. Even after deep potations, his intellect remained comparatively unimpaired, and he could eloquently advocate the cause of his client after partaking of such a quantity of claret as would startle most barristers of our degenerate days.

Numberless are the anecdotes still, after so many generations, told of him. As a speaker, he was, as we have said, almost powerless when unmellowed with wine, though not unfrequently the attorneys were apprehensive lest their clients' interests would be imperilled by the too deep draughts in which he was wont to indulge, especially when about to address the jury. The Superior Courts in those days were held in Christ Church Cathedral yard, Dublin, and were surrounded by narrow lanes, one of which was popularly called *Hell*—a profane and an unseemly sobriquet for a place adjoining a cathedral. Over the arched entrance there was an image of the devil in carved oak, not unlike those hideous black figures sometimes seen over tobacconists' doors. This *locale* of hell and the devil are alluded to by the poet Burns, in his story of "Death and Doctor Hornbrook," when he says:—

"But this that I am gaun to tell,
Which lately on a night befell,
Is just as true's the deil's in hell
Or Dublin city."

Here were sundry taverns where the counsellor would cosher with the attorney. Here Malone, and Philip Tisdall, and, prior to them, our friend Sir Toby Butler, cracked their jokes and tossed repartee. "It is astonishing," says a writer in the *Dublin Penny Journal*,¹ "how those old fellows could do business coolly in the day who came to it under the effects of the over-night's hot debauch. Doubtless it did, to some extent, affect them, and there are extant

¹ Vol. i., pp. 142-3.

anecdotes of Sir Toby that show the shifts that, at times, he had recourse to. He was engaged in an important cause which required all his knowledge and legal acumen to defend; and the attorney, fully alive to the importance of keeping Sir Toby cool, absolutely insisted on his taking his corporal oath that he should not drink anything until the case was decided. He made accordingly an affidavit to that effect, and kept it as follows:—The cause came on, the trial proceeded, the opposite counsel made a masterly, luminous, and apparently powerful impression on the jury; Sir Toby got up, and he was cool, too cool—his courage was not up to the sticking point, his hands trembled, his tongue faltered, everything denoted feebleness—whereupon he sent to mine host in ‘Hell’ for a bottle of port and a roll when, extracting a portion of the soft of the roll, and filling up the hollow with the liquor, he actually ate the bottle of wine, and recovering his wonted power and ingenuity, he overthrew the adversary’s argument, and won the cause.”

Of all the jovial characters who frequented “Hell,” none was longer remembered either for wit or for length of revelry than the humorous subject of our memoir. Pleading one day before a certain judge of a very bad character, in one of the assize towns of his Circuit, the learned judge, in a half jocose way, remarked that Sir Toby’s ruffles appeared rather soiled. “Oh, yes, my lord,” said Sir Toby, in the blandest manner possible, “but,” showing his hands, “you perceive, my lord, that my hands are clean.” The judge reddened, and became confused, amid the laughter which the courteous retort elicited in a crowded court.

TRIAL OF SIR THOMAS SOUTHWELL AND OTHERS FOR HIGH TREASON.

At the Galway Assizes in March, 1688-89, Sir Toby, as Solicitor-General, was engaged for the Crown in the case of *The King v. Sir Thomas Southwell, and one hundred others*, for high treason. The Crown Judge was Peter Martyn, who, with somewhat questionable humour, was preceded on his way to the Courthouse by a piper instead of a trumpeter, which had been the custom with the judges on all occasions. Sir Thomas, the principal prisoner, was the representative of an ancient English race, which had removed to Ireland in the reign of James I. Their ancestor, Sir John De Southwell, was

the faithful friend of Edward I., from whom he had a grant of the Castle of Bordeaux for life. His grandfather, who had been Sheriff of the Counties of Limerick, Kerry, and Clare, was created a baronet by Charles II. in 1661. The facts of the case against Sir Thomas were, as stated by the Solicitor-General to a jury of the County Galway, as follow:—Sir Thomas Southwell, of Callow, and Castlemattress, was a staunch supporter of William, Prince of Orange. On the surrender of Moyallow (Mallow) to the forces of King James, he, with his brother William, and two hundred others, determined for their common defence to make their way to Sligo, and join the partisans of the usurper. On their way there they encountered several small bodies of the supporters of King James, whom they defeated with little loss to themselves. But James Power, High Sheriff of the County of Galway, having heard on the previous day of their intended march, raised the *Posse Comitatus* of the county, and called upon Captain Thomas Burke to take the rebels prisoners. They were accordingly surrounded, and induced to surrender on the terms contained in the following treaty:—

“Articles agreed to between James Power, Esq., High Sheriff of the County of Galway, and Sir Thomas Southwell, Bart., and others.

“Whereas James Power, Esq., High Sheriff of the county of Galway, and Captain Thomas Burke, Commander-in-chief of his Majestie's forces, quarter'd in the town of Loughrea, having intelligence that several gentlemen and others, on the 1st day of March instant, travelled the road leading from Irres in the county of Clare, towards the town of Loughreagh, being the road they intended to go, met them there, and demanded their horses and arms for his Majestie's use, which upon capitulations made between the said James Power, Esq., and Captain Thomas Burke of the one part, and Sir Thomas Southwell, Bart., Bartholomew Purdon, Esquire, and Thomas Miller, Esquire, on the other part, in behalf of themselves and of all as well gentlemen and others that were with them and of their company, were freely and peaceably delivered, and given up by them to us for his Majestie's service, on these following conditions, which we the said James Power, Esq., and Captain Thomas Burke, promised them in behalf of the Government should be honourably and punctually performed and kept.

“Imprimis, That they and every of them should have their lives preserved, and that whatsoever they had acted in that affair (they affirming that their coming in that posture was for preservation of their lives) should be forgiven and forgotten, and passes given them or any of them to go where they pleased (provided they did not go to the North or Sligo), without being

rifled or anything taken from them, except such horses and arms as were fit for his Majestie's service.

"Secondly. That every gentleman of them should have their own pistols and swords, and one nagg or horse given them to ride on in case his own (being musterable) should be taken from him.

"Thirdly. That if they desired it, they should have a party of horse or foot to protect them for their greater safety in travelling, where they or any of them had a desire to go, except to the North or Sligo, as aforesaid. Given under our hands and seals the first day of March, 1688, and in the third year of his Majestie's reign, James the Second, by the grace of God King of England, Scotland, France, and Ireland, &c.

"NOTE. That it happened near night when they met, so that the agreement before mentioned could not be reduced into writing in the field, but several times since being tendered to the said High Sheriff and Captain to sign, they still declined it, but nevertheless acknowledged the truth thereof, before Lord Galway, Father Dolphin the Friar, and others in Loughrea. And about eight or nine days after the said Captain Burke signed a certificate in presence of Captain Arthur Ffrench, and the said High Sheriff writ a letter to the Lord Deputy, containing the principal parts of the said articles, as by the following copy may appear :—

"Captain Burke's certificate deliver'd by Captain Robert Forster to Captain Ffrench on Good Friday, 1688.

"Whereas on the first day of this instant March, Sir Thomas Southwell, and a considerable party of horse, were travelling from the County of Clare through the County of Galway, near Loughreagh, an account whereof being brought to Captain Thomas Burke, whose troop, quartered at Loughreagh, and on notice immediately with his troop repaired to meet the said Sir Thomas Southwell and his party, and having drawn up within shot of each other the said Sir Thomas sent one to give an account of his and his friend's design to ride without offence through the country, and prayed not to be molested : Whereupon the said Captain Thomas Burke made answer, that without the Government's pass so considerable a party should not ride where he had power to hinder them. Then the said Sir Thomas desired to be permitted to return whence he came. To which he was answered, that by late order from the Government Captain Burke was to seize all arms and horse fit for his Majesty's service in the county of Galway, and that he would not permit them to go on nor return till he had their horse and arms, and persisting firm therein, the said Sir Thomas and his party submitted, and declared their obedience to the Government's order ; he the said Captain Thomas Burke assuring them that he would secure them their lives, and offer'd them such small naggs as he thought fit to carry the said Sir Thomas and chief gentlemen back to their respective homes. This I, the said Captain Thomas Burke, having promised on my word, do now certifie for truth, as Witness my hand this 9th day of March, 1688-9.

THO. BURKE.

The following is a copy of the High Sheriff's letter delivered to Captain Jurdon, to be handed by him to the Lord Lieutenant:—

LOUGHREAGH, *March 9th*, 1688-9.

MAY IT PLEASE YOUR EXCELLENCY,

It happened on Friday last, the first day of this instant, I had intelligence that a party of horse, with Sir Thomas Southwell and others, were making their way through this country to Sligo or the North, being routed out of Munster, whereupon the horse and foot in this town, being commanded by Captain Thomas Burke and Captain Charles Dawly, made ready to intercept the said Sir Thomas and his party, who met upon a pass and faced one another; but a treaty being proposed they came to a capitulation, wherein it was agreed that the said Thomas and his party should lay down such horse and arms as was fit for the king's service, and after so doing that they and every of their lives should be secured them, and dismissed with such passes and convoys as may bring them safe to their several habitations without any harm to their persons or goods. All which, with submission at their requests, I humbly offer to your Excellency, and subscribe your Excellency's

Most humble and

Most obedient Servant,

JAMES POWER.

The Solicitor-General's speech occupied several hours, and on its conclusion the prisoners threw themselves on the mercy of the Court. But the learned judge had no discretion; he was constrained to pass the sentence of the law upon them, which was, that they were to be hanged, drawn, and quartered; but he assured them that they might nevertheless trust to the lenity of the King, who had then lately landed at Cork. After a fortnight's imprisonment, a respite was granted for a month, which was afterwards extended to three, and finally to six months, in consequence of their friends having promised to procure from the English Government the exchange of an equal number of Catholic Irish prisoners, then undergoing imprisonment in England. Some of the prisoners of King William's party, however, not being satisfied to wait until the exchange could be effected, endeavoured to escape; whereupon Sir Thomas Southwell received the following message from the

Earl of Clanricarde, a firm supporter of the King, to whom he had sworn allegiance:—

“GENTLEMEN,—You could not be satisfied with his Majesty King James’s mercy, which he has hitherto offered you in sparing your lives, but now, unmindful of his kindness, you hold correspondence with the Northern Williamites, and plot with them who are his Majesty’s enemies, and the enemies of your country, to overthrow his Government in this kingdom, and to establish that of the usurper William ; therefore I am sent to ye to bid ye all prepare for instant death, which ye have now the second time justly deserved.”

When this very uncomfortable message was read to the prisoners, they were struck with terror, and humbly requested the Earl, by petition, to be allowed to prove their innocence to King James; but the answer they received was: “Longer time to repent I grant ye, but for sending any messages I will not permit.” This reply, which they received on a Friday morning, caused them immediately to prepare for death, as they were informed they would be executed on the following Tuesday. About this time a Scotch nobleman, the Earl of Seaforth, one of the firmest supporters of the House of Stuart, having had an interview with Sir Thomas Southwell, felt deeply for his sufferings, and immediately brought the matter under the notice of the King, who at once issued a warrant to the Attorney-General, Sir Richard Nagle, to prepare a Fiat for the pardon of Sir Thomas and his companions in arms. “This the Attorney refused to obey, saying it was more than the King could do. The Earl returned to his master, and reported the Attorney’s answer, who, being sent for, positively told the King that it was not in his Majesty’s power to grant him a pardon. At which the King was overcome with grief and passion, and locked himself up in his closet. This stiffness of the Attorney was grounded on the Act of Attainder, passed in their Parliament, whereby the King was debarred from the prerogative of pardoning, and the subject foreclosed from all expectation of mercy. However, the Earl at length prevailed, and Captain Bozier was despatched to the Galway gaol, who arrived there on the 2nd of January, 1689-90, with an order to release Sir Thomas Southwell, and with money to discharge his fees, defray his expenses, and enable him to travel, the King signing his pardon under the Great Seal, 1st of April,

1690. The Earl of Seaforth then took him to Scotland.”¹ Five-and-twenty years afterwards—it was in 1715, when the Earl joined in the rebellion in Scotland against the House of Brunswick—Sir Thomas Southwell, remembering former times, interfered in his behalf to obtain from the Government of the day the restoration of those enormous estates which he had then forfeited.

A.D. 1690.—The story of the revolutionary wars of this year is well known; it has been written by the most eloquent pens in our language, and it would appear to belong rather to the history of Ireland than to the history of the Connaught Circuit. We shall only say that after the Battle of Aughrim, which was fought on the 12th of July, 1691, General Ginkell marched the army of King William to Galway, before the gates of which town he arrived on the 19th of the same month. Consternation prevailed everywhere; and though it was at first resolved to defend the town, still there was a large and influential party within its walls which, seeing the hopelessness of resistance, desired its surrender. Indeed, resistance must have been hopeless; for the garrison consisted of only about two thousand four hundred soldiers, indifferently armed and clothed. The spirit that leads to victory no longer animated the hearts of men who had heard the cannon of Athlone and Aughrim. The artillery on the walls were ill-mounted and old, while, on the other hand, Ginkell led to the siege upwards of fourteen thousand troops, flushed with triumph. A large and influential party then, amongst whom was Mr. Justice Daly (ancestor of Lord Dunsandle), desired to surrender, and, fearing that the party of resistance might nevertheless prolong the struggle, he devised the following plan. He despatched a messenger to General Ginkell, desiring that a party of soldiers might be sent to seize him, and seemingly force him from his habitation near the town, a circumstance which he conceived would lead to its more speedy surrender. For it seems that he possessed the confidence and esteem of all parties, and that he had concerted measures with a few of the inhabitants, conceiving that the apparently forcible seizure of his person would induce his friends to excite a party in the town who would insist

¹ Southwell MSS., *vide* Thorpe's Catalogue. "Lodge's Peerage," Vol. iv., Ed. 1754, p. 234.

on a surrender; but in this he was disappointed, for the French party were still dominant, and they were for "no surrender." The town was put into a state of defence;¹ but nevertheless, on Sunday, the 21st of July, it capitulated on the terms of the free exercise of the Catholic religion in private, a free pardon for all within the walls, and liberty for them to enjoy their estates with all rights under the Acts of Settlement and Explanation, one of the sixteen articles of capitulation being that the Roman Catholic barristers of the town were to have free liberty of practice as in the days of Charles II.

The great knowledge Mr. Justice Daly had of law is admitted by Colonel O'Kelly, in the *Excidium Macariæ*, who states that the judge had been arrested and imprisoned in the town of Galway by the Duke of Berwick, on suspicion of keeping private correspondence with the common enemy; but the Earl of Tyrconnell, disbelieving, no doubt, that a judge who had been raised to the Bench by James II.² could be guilty of a traitorous correspondence, ordered him to be set at liberty, and restored to his former station and dignity. He was included in the attainder of 1691, but afterwards obtained his pardon from William III.

A.D. 1691.—On the 3rd of October an entire cessation of hostilities, which in truth may be said to have been disastrous defeats for the Irish, were ended by the Treaty of Limerick, which had, as we have already stated, been drafted by Sir Toby Butler, as yet Solicitor-General, Sir Gerald Dillon, Prime Sergeant, and John Browne, of Westport, all lawyers practising on the Connaught Circuit. In the year following the execution of the treaty, and of the articles of Galway, all the Catholic judges were removed from the Bench, and Protestant lawyers were appointed in their place.

Confiscations followed the Revolution, and many a Catholic family in the Province of Connaught lost their estates for fighting for their King, James II., against his parricidal daughter. There occurred a case in the County of Galway of this class not to be

¹ Story's "Wars of Ireland," Edition 1691, p. 159. Hardiman's History of Galway, p. 157.

² Mr. Justice Daly's appointment as Judge of the Common Pleas bears date 22nd March, 1689.

forgotten—the case of Eileen Burke. Her father had been the owner of the Carrentila estate, near Dunmore. It had escaped the Cromwellian forfeitures,¹ but Burke was now attainted: his daughter, Eileen, was a charming girl; and she and her mother continued to live in the mansion after the forfeiture and confiscation; but he, who had been the owner, was afraid to do so, and only came there by stealth for his meals, obtaining nightly shelter in the cottages of his former tenants as best he could. The Government of William and Mary, who had secret intelligence of his midnight wanderings, sent a file of soldiers to watch his comings in and goings out; and one day, early in 1693, they came upon him just as he was standing at the window of his former home. They rushed at the door, and broke it in. Eileen Burke, seeing that they had effected an entrance and arrested her father, seized on a brace of pistols, which she primed and loaded, and having done so, she warned them to let her father go. They refused to do so, whereupon she fired upon them, killing two. Thereupon both father and daughter were committed to the Galway gaol, and afterwards brought on a *habeas corpus* to Dublin, and there cast into prison to take their trial for wilful murder. The officer who commanded the guard taking them to Dublin, fell in love with the girl, and went to London to see and influence their Majesties, William and Mary, on behalf of her and her father. The story was a romantic one, and father and daughter were taken, by royal command, in chains to London. The young lady was attired in the Irish costume, which became her well. The Queen, taking a great fancy to her, procured the reversal of the attainder, and the property was restored to the father. She married the officer,

¹ “It is a subject of curious and important speculation to look to the forfeiture of Ireland during the seventeenth century. The superficial contents of the island are calculated at 11,742,682 acres (that is, of arable land). Let us now examine the state of the forfeitures—

	ACRES.		
Confiscated in the reign of James I. ...	...	...	2,836,837
Confiscated by Cromwell ...	...	...	7,800,000
Forfeited, 1688 ...	...	...	1,060,792

11,697,629 ;

leaving 45,053 acres unconfiscated.”—Lord Clare’s speech, 1799.

70 DEATH OF SIR JOHN HELY, C.J., ON CIRCUIT.

Captain Lewis, who had interested himself for her, and by him had three daughters, ancestors of three well-known families now settled in the County of Galway.

A.D. 1701.—There is little to notice on the Circuit in this year if we except the sudden death, on the 7th of April, at Ennis, where he was interred, of Sir John Hely, Chief Justice of the Common Pleas, he being one of the going judges of Assize. The hardships of riding the Circuit from Carrick-on-Shannon to Ennis were too great for one of his advancing years, and he died as his work was done. Sir Richard Cox, second Justice, was thereupon appointed Chief Justice in his place. Of his wisdom the west country gentlemen had a high opinion, and it was therefore, perhaps, that he usually selected for his Circuit the Connaught, of which he was one of the going judges at the Spring Assizes of 1703. Crown Judge at Ballinrobe, when charging the Grand Jury, he had a sealed packet handed to him, which proved to contain a summons from Queen Anne requiring his presence at her palace at St. James's, Westminster, at his earliest convenience; Prime Sergeant Saunders taking his place, concluded with the other judge the remainder of the Circuit, and Sir Richard left with all speed for London, where he arrived within a fortnight. He was most graciously received by the Queen, and he had no hesitation in telling her Majesty his opinion that the Act destructive of the woollen trade in Ireland "was the most impolitic step ever taken by England, and that nothing could be more fraught with evil than the prohibition of the exportation of woollen fabrics from Ireland." The Queen having, we may presume, consulted him on the Penal Laws, then about to be enacted, presented him with a sum of £500; and on the 6th of August in the same year, he was appointed Lord Chancellor of Ireland. That the opinions of the Chancellor were opposed to the Penal Laws is probable; nevertheless he was borne down by the temper of Parliament; and in the month of March, 1704, was introduced into the Irish House of Commons "an Act to prevent the further growth of Popery." This measure sought to enact that the Court of Chancery could compel Catholic parents to make sufficient allowance to such of their children as should abjure their father's faith, that where the eldest son of a Catholic father became or was a Protestant, the father

became thereby tenant for life only, and could not sell the estate of which hitherto he had the fee; that no Catholic could be a guardian of children, though born of Catholic parents; that if one of the parents were a Protestant, the Lord Chancellor should be empowered to have the children brought up in the communion of the Established Church; that Catholics should not be permitted thenceforth to purchase lands; that they were not to be suffered to take leases of more than thirty-one years; that lands in the hands of Protestants should, to the exclusion of Catholics, descend to the Protestant next of kin; that lands in the possession of Catholics should not descend to the eldest who had not conformed, but should gavel, or be divided, share and share alike, amongst all the children; and that no person could be appointed to an office who had not received the sacrament according to the rites of the Established Church. And as the welfare of the Protestants depended much on the security of Limerick and Galway, and on their being in the possession of Protestants, it was enacted that no Papist shall, after the 24th of March, 1703, take or purchase any house or tenement in either of these places; and that all persons then inhabiting Limerick or Galway should, before the 24th of March, 1703, become bound in a reasonable penal sum to be faithful to the Queen and her successors, or else depart from those towns and their suburbs. Such are the principal enactments of the Second of Anne, chapter 6, then about to be enacted. The Catholics applied to be heard by counsel at the bar of the House of Commons against the bill, and on the 22nd of February, 1703-4, accordingly, Sir Toby Butler, Sir Stephen Rice, and that eminent lawyer Richard Malone, spoke against the measure at the bar; but their arguments, however weighty, had no influence, and the next day the bill was ordered to be engrossed and sent up to the Lords.

The petitioners having applied to the peers also for leave to be heard against the bill, their application was granted; and the same counsel, on Monday, 28th of February, appeared there and offered the same arguments as they had made use of in the other House. But all opposition was fruitless; the measure passed into law. But even in depths there are lower depths, and this measure of 1704 was surpassed in infamy by the Eighth of Anne, chapter 3 (Irish), passed in 1709. By this measure, when the child of a Catholic

became a Protestant, it was at once to receive an annuity from its father. Barristers, attorneys, and all officers connected with the courts of law, were compelled to educate their children in the Protestant religion. If a Catholic wife became a Protestant, she thereby became entitled to receive a portion of her husband's chattels. Any Catholic public schoolmaster or private tutor that educated either Protestant or Catholic children, was to be prosecuted as a "Popish regular convict;" and £10 reward was offered to any informer who should give such information as would lead to the apprehension of any "Popish usher." Any two magistrates had power to summon any Catholic to appear before them, and question him as to where he had last heard Mass, the names of those who were present, and also of the priest, and where he resided. Should such Catholic refuse to give the necessary information, it was optional with the magistrate to impose a fine of £20, or to imprison for twelve months. Any Protestant discoverer had power to file a bill in Chancery against any person whom he knew to be concerned in making leases, sales, or mortgages in trust for Papists. Catholic merchants and traders were not allowed to have more than two apprentices. Thirty pounds per annum were granted to every priest who would become a Protestant. The Corporations passed by-laws to prevent Catholics from trading in towns. The Treaty of Galway was openly violated, in 1717, by an Act of Parliament intituled the "Galway Act." Catholic freemen were disfranchised, and the rabble of every nation were invited to dwell in the town, provided only that they took the oaths against the Catholic faith.

Of the Penal Laws enacted in the early years of the reign of Queen Anne, M. Montesquieu, in his "*L'Esprit des Lois*," observes that "they were so rigorous, though not professedly of the sanguinary kind, that they did all the hurt that possibly could be done in cold blood." Of the bigotry of the judges we have now not the faintest conception. The mildest amongst them was one of whom we have had already occasion to speak—Sir Richard Cox—whose favourite Circuit was the Connaught, and even he thus, in his last charge to a Grand Jury, spoke:—

"Gentlemen, ye ought to observe that this Popery, which is so dangerous and spiteful to you, is irreconcilable, for its pretended infallibility will not suffer Papists to reform any error, how gross soever, or make one step

towards you, so that there can be no peace with Rome without following all her superstitions.

“And as for the Pretender, we all know that he has many Popish adherents here, and powerful confederates elsewhere. We know that the Irish regiments in France are at his devotion, and we see what industry is used to recruit them, and send over more to his service. We know the consequence of his coming to the Crown would be the destruction of our most Gracious Queen (whom God long preserve), and the ruin of the Protestants. Our religion, lives, liberties, and estates would be a sacrifice to his bigotry and revenge, and this island would be, in all probability, the most miserable heap of desolation in the world ; and therefore it is the duty of all Protestants in Ireland, of whatsoever denomination, to unite in affection and in the proper measures to preserve the Government, the Established Church, and themselves from the common enemy, and the reason is, because all is little enough to compass our safety, for the Papists in this kingdom are more than double the number of the Protestants, and they are supported by a Pretender, and all those that are in his interest, or their religion.”

The unforgotten wrongs inflicted by the Penal Laws crop up at every step one takes in the history of our Circuit during the last century. Under the sanction of that execrable code, in 1720 an unscrupulous man, one John Brennan, a Protestant discoverer, filed a bill against Sir Toby Butler, claiming the lands of Taggart, in the County of Dublin, of which the latter had obtained a long lease, and which, for the purpose of evading the Penal Laws, he had conveyed, in trust, to the celebrated lawyer Philip Tisdal. But neither of those astute men was a match for Mr. Brennan, who, on the 23rd of May, 1720, obtained from the Lord Chancellor of Ireland (Lord Middleton) a decree putting him in possession of the lands in question. Sir Toby did not long survive this decree, which in the late evening of an active life took from him the earnings of many a wearied hour of intellectual toil. He died on the 11th of March following, and was buried in St. James' Churchyard, Dublin, where a monument of no great pretensions marks his resting-place. His picture, as he stood at the bar of the House of Commons advocating the Catholic cause in February, 1704, in opposition to the Act “to prevent the further growth of Popery,” is in the possession of his descendant, Augustine FitzGerald Butler, of Ballyline, Esq., in the County Clare.

A curious case of wilful murder occurred at Tuam, in the early years of the last century—that of the Very Rev. Henry Echlin,

Protestant Dean of the diocese. He lived it appears on the Mall in that cathedral town, and was, it is said, extremely unpopular, owing to his enforcing the tithes which were withheld from him during the reign of James II. On the morning of Good Friday, 1712, he was found murdered in his dining-room, his money, plate, &c., all being abstracted. The agonizing cries of his servants disarmed suspicion, and the coroner's jury brought in a verdict, after inquisition made, of wilful murder by parties unknown. For several days after the inquest, the Dean's dog was observed crying and scraping up the earth in a secluded nook in the garden. Several feet below the surface was found the heavy plate chest, belonging to the murdered man, locked with his padlock. The lock was broken open, and the money and plate all recovered. The coachman was arrested, and in his pocket was found the key of the chest. Denial was useless. He was committed for trial, found guilty on his own confession, and hanged. The following inscription in the Protestant Cathedral of Tuam tells of his barbarous murder:—
“HIC JUXTA SITUM EST REV^{DL}. ROBERTI ECHLIN, DECANI TUAMENSIS, QUODCUNQUE ERAT MORTALE, QUI DIE PASSIONIS DOMINI PARRICIDALI SERVORUM MANU EXTINGTUS EST, APRILIS 18, A.D. 1712, ÆTATIS 73.

CHAPTER V.



THE Penal Laws passed in the early years of the reign of Queen Anne practically excluded all sincere Catholics from the bar. The universities and halls of learning were now, as we observed, closed against them; the Inns of Court, indeed, they could enter; but an oath they could not conscientiously take precluded their being called to the bar. There were Catholics who took the oaths, which in secret they scorned; but then such of those men as joined the profession of the law were not likely to do honour to their Circuit. Great numbers emigrated to the Continent, where they found what they could not find at home—the gates of promotion open. Amongst the converts to the Protestant faith who practised on the Connaught Circuit, there are few now remembered, except by those who, like the writer, must examine the ancient pleadings to which their names are attached.

But these converts were much dreaded by Primate Boulter, to whom the Prime Minister, Sir Robert Walpole, had confided the entire government of the country. The primate, doubting their sincerity, felt an intense anxiety to exclude from the bar, not only Catholics, but converts from Catholicity. “We must be all undone here,” he writes, “if the bar, as a profession, gets into the hands of the converts, where it is already got, and where it every day gets more and more.”¹ A convert, the most reverend prelate thought, should test his sincerity by five years’ perseverance in Protestantism before he could be admitted a barrister.

On this Circuit there were many lawyers in extensive practice. Thus the Caulfields, of Donamon, in the County of Roscommon, both father and son, the former renowned as an equity pleader, and

¹ “Boulter’s Letters,” Vol. ii.

remarkable for his Whig principles ; he was raised to the Bench in 1718, and resigned in 1734, with a pension of £400 a-year, on obtaining for his son, St. George Caulfield, the appointment of Counsel to the Commissioners of his Majesty's Revenue.

Father and son were renowned for their learning in the law and unbending rectitude. William, a Justice of the King's Bench, was borne down by a majority, by Chief Justice Whitshed and his brother Boate, in a court where the purity of the ermine was stained by such outrages on the forms of justice as provoked the unsparing language used by the merciless pen of Dean Swift. The Attorney-General, however, did not attempt to file a criminal information against the very reverend writer. St. George Caulfield, who had been appointed Chief Justice of the King's Bench in 1751, resigned in 1760, the king's letter reciting that license had been granted to him to resign on account of his age and infirmities, and that his Majesty had allowed him a pension of £1,000 per annum for life. Parsimonious in the extreme, he was prevented by his niggardly propensities from extending to his neighbours that hospitality which they might well have expected from a man of his fortune and position. The Protestant clergyman of his parish had some of the wit which was much affected by men of his cloth, since the Dean had made wit fashionable, and during his incumbency he had never, previous to the date of our story, been invited to dinner by the Chief Justice, who enjoyed witticisms, even at his own expense, immensely. It so happened that a personage of importance, connected with the government, was passing in the neighbourhood of his place, and his lordship could not avoid inviting him to remain at Donamon for some days. The official did remain accordingly, and the neighbouring gentlemen were of necessity invited to meet him. Amongst them was the parson of whom we have spoken, upon whom the duty devolved to give grace when dinner was over, which he did in these witty and impertinent words:—

“ We thank the Lord, for this is nothing less
Than the fall of manna in the wilderness ;
In the house of famine we have found relief,
And known the comforts of a round of beef ;
Chimneys have smoked that never smoked before,
And we have dined where we shall dine no more.”

The Chief Justice enjoyed, it is pretended, the joke, and on a long subsequent day he asked his reverence to partake of a frugal fare—a foreshadowing of which might have suggested to the Roman poet the

“Sit mihi mensa tripes,
Conchaque salis.”

The parson again was at his post; the covers were taken off; enough and no more appeared on the table for the guests; and the reverend divine thus, with uplifted eyes, outstretched hands, and much emphasis, proceeded to bless the meats:—

“May He who blessed the loaves and fishes
Look down upon those empty dishes;
For if they do our stomachs fill,
'Twill surely be a miracle.”

We apprehend that this was the last time that that parson was ever seated at the Chief Justice's table. History is silent on the point.

The family of the Stauntons gave several members to the Connaught bar in the last century. George Staunton, who, in the reign of Charles I., had acquired extensive estates on the eastern shores of Lough Corrib, had two sons, Thomas Staunton, of Waterdale, and George Staunton, of Cargins, near Headford. The elder of these, Thomas, of Waterdale, had two sons, John Staunton, one of the most eloquent men at the bar, M.P., and Recorder of Galway, A.D. 1706 (whose son John, A.B., T.C.D., 1727, was also a barrister, and held a good position on the Circuit), and Thomas, the younger, M.P., Second Sergeant, 1712, and Master in Chancery from 1725 until his death in 1731, and who in 1728 had been rewarded with an honorary degree of LL.D. by Trinity College, Dublin. George Staunton, of Cargins, had two sons, viz., James, barrister-at-law, long a leader on the Circuit, and George, grandfather of Sir George L. Staunton, Attorney-General for the Island of Grenada, and afterwards, in 1792, secretary of Lord Macartney's embassy to China.

Thomas St. Leger (afterwards one of the Barons of the Exchequer), Arthur Ormsby, and Robert Shaw, belonged to this Circuit; so did Henry Lynch and Oliver Burke, both arbitrators in the

celebrated case of Henry Blake and Richard Martin, when the former claimed and exercised an exclusive right of fishing in the lower waters of the Dowris river, in the County of Galway, and in the tidal waters of the estuary at its mouth.¹

This Oliver Burke was a most amusing man. The following case, which was sent to him for his opinion, may convey some idea of his drollery :—

“Case for opinion and advice of Counsel : Samuel Symcocks, our client, called at a relative’s house, in the Main Guard Street, Galway, and, uninvited, sat adown for to eat his dinner ; thereupon the man of the house (defendant, Marcus Fitz John Linch) ordered him out, whereupon his wyfe, Mary Linch, otherwise Caddell, rushed up stairs, and as querist was going out, flung on top of him a pot full of water :—Quere, Can damages be recovered in an action against Linch for act done by his wyfe ? Counsel will please advise generally.

“Answer : if plaintiff went to defendant’s house unasked, he could expect nothing better than pot-luck. No action.”

There were other lawyers on the Circuit, and in considerable business about this time (1727). There were Edward Eyre, and Dominick Burke, M.P., and John Bodkin, of Carrowbeg.

The reports that have come down to our time of the trials at this period on the Connaught Circuit are very few. The greater part of the newspapers of that day were almost valueless ; and neither the *Dublin Intelligencer*, started in 1705, nor the *County Intelligencer*, started in 1690, makes a passing allusion to the assizes. But *Pue’s Occurrences*, as well as the *Dublin Gazette*, and *Falkener’s Journal*, do give some sensational cases, according as such might have occurred on any of the circuits, which were then five in number.

The difficulty of transmitting reports from the assize towns may have been one of the chief causes of the scantiness of such intelligence. Postboys on horseback, one from Sligo and the other from Galway, conveyed the entire correspondence of the province of Connaught to Dublin. Arriving there on Saturday night, they took their departure westward every Monday morning.

¹ *Acheson’s Estate*, 3 Ir. Reports, Equity, p. 107, where the arbitration of those lawyers is noticed.

Nor were their journeys entirely free from danger, as appears by the following announcement in the *Dublin Mercury* of the 19th March, 1706:—

“On Thursday last, about half-past eleven o'clock at night, three rogues set upon the Connaught postboy as he was coming near Maynooth. One of them, being on horseback, rid a small way with him, but on a sudden took the boy's horse by the reins, and then knocked him off his horse, and the two others, who were both on foot, came over the hedge and opened the mail, and several letters were thrown about. We hear they used the poor boy very badly, leaving him for dead, having taken about eighteen shillings in money from him, that he was bringing to town, and then made off.”

The following advertisement, quaint and amusing, will convey to the mind an idea of the difficulty of correspondence 180 years ago in the County Galway, and will also give an idea of the dread in which attorneys were held in those days by the County Galway gentry:—

“TO BE LET from the first of November, 1708, a house and demayne situate nigh to the town of Headford, County of Galway. The post-boy, a civil man, comes in and goes out every second Monday. There is a rookery on the premises, good sportinge, and not an attorney within twelve miles.”

A.D. 1715.—In pursuance of the provisions of the Act lately passed to prevent the further growth of Popery, the Lords Justices instructed the judges on the Connaught Circuit to labour to their utmost for the extirpation of the Catholic faith. Accordingly, the Grand Jury of the County of Galway, at the assizes held on the 29th of March, 1715, informed the judges, in answer to questions put to them at the Summer Assizes of 1713, Summer Assizes, 1714, and the Lent Assizes, 1715, that the friars were returning to the neighbourhood of their old abbeys in great numbers; that unregistered priests were actually discovered reading Mass; that great numbers of the Catholic gentry had sent their sons abroad to receive foreign education; “that Ulick Burke, son to the Earl of Clanricarde, was missing, he having been sent to France; that John Burke, of Ower, was also a-missing; that he went out of this kingdom a year ago, and, we are informed, is in France; so also is Hyacinth Nugent, son to Thomas Nugent,

commonly called Lord Riverston, and many others.”¹ The John Burke here spoken of was a captain in General Dillon’s regiment in France.²

A.D. 1719.—In this year a case occurred in the Court of Exchequer which brings before the world Mr. Baron St. Leger, of whom we have already spoken, who had for several years practised on the Connaught Circuit, but who had not, as a barrister, risen to any great eminence. He was, however, in 1714, made Third Baron of the Exchequer, and in 1719 was, with Chief Baron Gilbert and John Paklington, the Second Baron, committed into custody by the Irish House of Lords, for his conduct in the memorable case of *Sherlock v. Annesley*. The facts of the case, so far as they interest us, are these :—

In 1719 Hester Sherlock brought in the Court of Exchequer an action of ejectment on the title against John Annesley for certain lands situate in the County of Kildare. A verdict was had, and judgment was entered for the defendant. The plaintiff appealed to the Irish House of Lords, which reversed the decision of the Court below, and judgment was then entered for the plaintiff. The defendant’s counsel advised an appeal to the House of Lords in England. The defendant did appeal, and the Court of Appeal reversed the decision of the Irish House of Lords, and established the judgment of the Court of Exchequer. The Irish House of Lords, disregarding the judgment in England, at once issued a writ of *habere* to Alexander Burroughs, High Sheriff of the County of Kildare, to put the plaintiff, Mrs. Sherlock, in possession of the lands, and the sheriff obeyed the writ. The defendant, by his counsel, now applied to the Court of Exchequer, and they, supporting their own judgment, caused a counter writ to issue, commanding the sheriff to make restitution of the premises to the defendant; and further, they imposed an enormous fine upon him for presuming to obey a writ of the Irish House of Lords, while a Court of higher jurisdiction, the peers of England, had confirmed the adverse decision of the Court of Exchequer. Of the bewildered sheriff we know nothing further than that he

¹ Record Tower, Dublin Castle, Presentments, &c. Carton 62. No. 558.

² *Vide* Dalton, King James’s Army List, 2nd Edition.

absconded, and was heard of no more in the transaction. On the 29th of July, 1719, it was resolved by the Irish House of Lords, the Lord Chancellor dissenting, that the Chief Baron and Barons "have acted contrary to law and the established practice of the King's Courts; and it is further resolved, that Jeffry Gilbert, Esq., Lord Chief Baron of the Court of Exchequer, John Paklington, Esq., and Sir John St. Leger, Barons of the same, are the betrayers of the rights and liberties of the subjects of this kingdom." Whereupon it was ordered that the Chief Baron and others, the Barons of the Exchequer, be taken into custody of the Usher of the Black Rod.¹ This case caused the greatest excitement in both countries at the time; and the excitement was increased by the passing of an Act of Parliament in England, entirely abolishing the appellate jurisdiction of the Irish House of Lords.

How long Baron St. Leger and his brethren remained in custody we know not; but the next time we hear of him is when he went the Connaught Circuit as Judge of Assize in the summer of 1730. A Catholic, named Lynch, was indicted on this occasion for carrying arms in the streets of Galway. He admitted that he was a Catholic, and had carried arms, and he claimed the right to do so again. His counsel, Thomas Staunton, relied upon the Disarming Act, passed immediately after the Revolution, and maintained that it only applied to persons who were alive at the time when that Act was passed. Undoubtedly Mr. Lynch had not then been born. The case was one of great importance, inasmuch as all the Catholics in the kingdom could, should the Crown be unsuccessful, carry swords in the streets, as it was customary for Protestants to do; and further, it would place arms in the hands of the Catholic peasantry. The learned baron, taking Mr. Staunton's view of the case, directed an acquittal. The Catholics of Dublin, when the verdict became known, appeared in the streets with their swords.

A.D. 1724.—"Several friars, four in number, were arrested by order of the Mayor of Galway, and tried at the Galway Summer Assizes of this year, for publicly celebrating Mass, and acquitted. They were defended by a right good counsellor, James Staunton."²

¹ From Lords' Journals, Vol. ii., p. 626, 627.

² "Pue's Occurrences."

A.D. 1731.—Baron St. Leger again went the Connaught Circuit in the spring of this year, when the duty devolved upon him of trying at Sligo the case of the *King v. Ormsby*, for the murder of a young girl named Catherine Conaghan. This case was one in which every feeling of the heart was awakened by the circumstances with which it was surrounded. William Ormsby was a young man, the son of a gentleman of position and fortune in the County of Sligo. He had hardly reached his twenty-first year when he was captivated by the beauty of this young girl, who moved as happily in the lower walks of life as he did in the higher. Their paths were different, and well would it have been for her if they had never met. He saw and loved her, and—the old, old story—he sought to make her his own. She measured more truly than he did the wide gulf that lay between them. She saw that that gulf could never be passed without plunging him into ruin; she rejected his suit accordingly; but he persevered, and at last he, a Protestant, was privately married according to the rites of the Church of Rome. A child was born in 1726. He still loved her, but scorned to acknowledge the daughter of a peasant as his wife. Leaving the county for a short time, he soon found himself in a whirl of gaiety at Dublin Castle, sought after by many who would gladly bestow wealth and power upon him; but there were rumours afloat, and it was whispered amongst his own circle, that he had a wife, and that while she lived no woman could imperil her position by marrying a man whose marriage would one day form the subject of judicial investigation. Ormsby soon resolved to break the marriage; but before he took any steps in that direction, she was found murdered in the Abbey of Sligo. It was said that, in the agonies of despair, she had flung herself from the summit of the tower, and ended her love and her life together. But the mangled corpse presented all the appearance of a dreadful struggle; and a coroner's jury brought in a verdict of wilful murder against William Ormsby. He absconded, and for three years evaded the vigilance of the law. At last he was arrested, and on the 27th of March, 1731, true bills were found against him by the Grand Jury of his county, and he was put upon his trial before Baron Sir John St. Leger. Sir Robert Jocelyn, the Attorney-General, conducted the prosecution, and the prisoner was defended by Mr. Staunton. “The trial

commenced at ten o'clock, and lasted until four in the afternoon, when the jury received their charge and went in, where they continued till nine o'clock the next morning, and then brought in a verdict of not guilty."¹

Thus ended this case in which so many features of romance are found. The grave offences which the lower classes of the Province of Connaught were charged with in the last century, at the several assizes, were abduction and murder, and both were of frequent recurrence. The first, indeed, was so prevalent that any lady bent on celibacy had better fly from the province, and particularly so, if she had obtained the reputation of being opulent. Girls having property, or likely to possess it, were oftentimes forcibly carried off. Secreted in the mountains, they were not easily recoverable by their friends; and left at the mercy of the ruffian and his confederates, they were at last, in many cases, obliged to become the legal property of the despoiler. As the abductor was generally some idle, dissipated blackguard, the fate of the ill-starred being who was united to him under such circumstances for life, was truly lamentable.

One of those runaways occurred in 1731, in the County of Leitrim. The facts, as disclosed on the trial, are reported "in Pue's Occurrences,"² and the name of the case was *The King, at the relation of Walter Tubman, v. Edmund Kernan*.

In the County of Leitrim, and on the borders of the County of Cavan, there lived a young man named Edmund Kernan, ardently attached to the faith of his fathers, but more ardently, it was profanely whispered, to a young lady of fortune, who lived close to the Castle of Dromahaire, who was a member of an ultra Protestant family. Her father bore the uneuphonious name of Walter Tubman; and he saw clearly in his readings of the Holy Scriptures, that the faith he belonged to was an undoubted truth, while the faiths of all those that differed from him were undoubted falsehoods; and therefore it was that he loathed the idea of his only child giving her hand in marriage to one who knelt before the shrine of Baal. The young man did not perhaps agree in the reasonings about Baal and his shrine—one thing he was resolved

¹ "Pue's Occurrences."

² Informations, Dublin Castle MSS.

on was to carry off the only daughter of the house of Tubman ; so on Friday, the 12th of November, 1731, he mounted his horse, and in company of a troop of his horsemen, he rode to Tubman's house, dismounted; and went in to pay a morning visit. Anna Tubman asked him would he stop and have dinner with them that day, that their dinner was to be of flesh meat. Kernan's only answer was to throw his arms around her waist, carry her struggling from her father's presence, and in an incredibly short time was off with his prize, surrounded by his horsemen all armed to the teeth. A priest was soon found, and the abduction completed. The young lady was closely watched, and to escape from her guards for three months was an impossibility ; but at last she did escape in the darkness of a winter's night, when her captors were off the watch, stole back to her father's house, and swore informations before a neighbouring Justice of the Peace. Her lover was arrested, and tried at the Summer Assizes for the County of Leitrim ; but the jury disagreed—on what ground it is difficult to state. He was again tried at the Spring Assizes of 1733, in the Court-house of Carrick-on-Shannon, and with the like result ; and we may presume that the jury were inclined to the opinion that she was a consenting party, inasmuch as when the young man had entered the house, she asked him to stop and dine, and joked about a meat dinner on a Friday.

A.D. 1735.—In the summer of this year, Robert Martin, of Ballinahinch, was charged with having murdered, in Galway, Lieutenant Henry Jolly, who, quartered at the time in the town, was spending the evening with some brother officers at a house in the mainguard. Inadvertently, it was said, he spat out of the window, and upon the head of Robert Martin, who, in a paroxysm of fury, rushed upstairs, drew his sword, and wheeling it over the unfortunate young man, ran him through the body, killing him on the spot. For this he was committed to prison, and the Attorney-General (Sir Robert Jocelyn) obtained an order from the Court of King's Bench to change the venue from Galway to Dublin. The following is an extract from the only copy of this curious trial supposed to be extant. Owing to the great influence of the accused, the trial took place at the bar, that is, before the full Court of the King's Bench, on the 2nd of May.

“The Court being sat, and the following jury sworn, viz., Michael Burke, Henry Burke, John Burke, Thomas French, Ross Mahon, William Boylan, John Halliday, John Broughton, Walter Lambert, David Poer, George Davis [*one omitted*]. The first witness for the Crown was Lieutenant George Bell.—Was not present at the time of the quarrel between the prisoner and the deceased, but very soon after deceased’s death saw him lying on the ground in a gore of blood, and his body with several fresh bleeding wounds, three of which were on his right side close upon his breast, and one of them pierced out of his back, quite through and through his body. Deceased had also two wounds more on his left side, which penetrated the very cavity of his body. Having been asked by the Court had the deceased any other wounds, he said a few on his left hand and arm, but they would not prove mortal. He felt to know if deceased had any pulse, and found none. This testimony he gave at the Coroner’s Inquest on the deceased’s body at Galway. The Court and the prisoner asked this witness very few questions, his testimony being only grounded on the description of the deceased’s wounds.

“Captain Edward Southwell, sworn—Mr. Jolly and witness were diverting themselves in a billiard-room at a coffee-house in Galway. The prisoner Martin furiously came up into the room, drew his sword, and instantly demanded satisfaction of the rascal who spit upon him as he was passing by. Witness answered it was he that did it, but through no affrontful design, and in the most humble manner asked his pardon. Such humility little availed, for Mr. Martin insisted upon further satisfaction, and being in a very great passion, witness said, ‘Let me go to my barrack for a sword—I will very speedily return, and comply with your request;’ there being no sword between either Mr. Southwell or the deceased, Mr. Jolly.

“Prisoner asked witness was the first attack by the deceased with any instrument not a sword, at the billiard-table, before the prisoner drew his sword? Answer—No.

“The next evidence was Robert Watson, the coffee-boy, who swore that there were four yards’ distance at the billiard-table between Mr. Martin and Mr. Jolly; the latter standing by the window, and Mr. Martin at the door with his sword drawn, and approached

Mr. Jolly. That Mr. Jolly took up a chair to defend himself, through the frame of which the prisoner made several thrusts at the deceased.

“ The evidence on behalf of the prisoner were Julian Mathews, Nicholas Bates, [] Donnolly, and others who, to their knowledge, gave their several testimonies in favour of the prisoner. Donnolly’s testimony appeared very much in his favour, and of great moment to the jury. The Court then summed up the evidence, and charged the jury, who, after some stay, brought in the verdict NOT GUILTY.”¹

This report was evidently a hasty and imperfect publication, issued immediately after the trial, to gratify public curiosity, and cannot, therefore, be much depended upon. The panel was from the venue of the offence. Lieutenant Jolly was interred in St. Nicholas’ Church, Galway, where the following inscription may be seen on a small mural monument :—“ Near this place lies the body of Henry Jolly, Lieutenant of Grenadiers in the Hon. General James Dormer’s Regiment of Foot.”

The numbers convicted of murder in those years were not much greater than in later times. Not an assizes passed without some criminal being found guilty and executed. In the *Dublin Gazette* of the 24th of March, 1740, it is announced that the murderer of Mr. Anthony Kirwan was to be executed at Galway, and that the two who murdered Mr. Trench’s steward were to be hanged at the same time. This startling intelligence might lead us to suppose that life and property were then in Ireland less secure than in England ; but it appears from the same paper that fourteen were found guilty, and nine were to be hanged at the Spring Assizes of the County of Essex in the same year.

The winter of 1740 was one of long and continued frost, which had set in before the potato crop had been raised ; the consequence was, that when the thaw had set in, in February, 1741, the potatoes all over Ireland were rotten in the ground. A famine followed, succeeded by a pestilence and by ruthless evictions, which had been witnessed by Oliver Goldsmith, then in his fifteenth year, and which have been immortalized by his pen in the “ Deserted Village.”

¹ “ O’Flaherty’s Iar-Connaught,” p. 295. “ Pue’s Occurrences.”

Mr. Justice Rose and Eaton Stannard, the Prime Sergeant, presided on the Circuit at the Summer Assizes ; but so great was the terror of the typhus fever, which swept multitudes away, that the courts were unattended by grand jurors or jurors. On the 24th of July the judges arrived in Galway. Mr. Justice Rose opened the Commission, and at once adjourned to the more healthy town of Tuam, there to be held on the 5th of the following month of October. The Galway races were also postponed, as appears by the following advertisement :—

“Take notice, that the town of Galway having the fever, the gentlemen of the county think proper to remove the races that were to be run for at the Park Course, near the said town of Galway, to the Turlough at Gurawnes, near Tuam, on Monday, the 14th of September, next.”¹

The 14th of September came round, and many attended the course. Many came from afar to the races ; and amongst them there was one Marcus Lynch, an opulent merchant in Galway, who had accepted the hospitalities of his friend Oliver Bodkin, of Carrowbawn, near Tuam. On the morrow he was to return, as he purposed, to Galway. “Oh, never shall sun that morrow see !”

On Monday, the 5th of October, 1741, Mr. Justice Rose and Prime Sergeant Stanner arrived in Tuam, there to hold the adjourned assizes. Since the adjournment a dreadful crime, or rather series of crimes, had been committed in the county—the wholesale murder of the Bodkins—of Oliver Bodkin, his wife, his son, his man-servant, and his maid-servant, and the stranger that was within his gates. For this crime the Grand Jury found true bills against John FitzOliver Bodkin, a young man, unmarried, who had not yet completed his twenty-first year, son of the murdered man ; against Dominick Bodkin, known as Blind Dominick, brother of the murdered man, who was old, childless, and also unmarried. Thus, it appears, that there was left no issue of the murderers, on whom the divine vengeance might descend from father to son to the third and the fourth generations. Neither was there left any living descendant of the murdered man. Not a descendant of the murderers, nor of the murdered, is now living on earth.

Within three or four miles of the town of Tuam, and on the

¹ “Pue’s Occurrences,” 5th Sept., 1741.

Headford road, were the mansions of Carrowbawn, the property of Oliver Bodkin, and Carrowbeg, the property of his brother, John Bodkin, a lawyer of great eminence on the Circuit, especially in the Criminal Courts. Few families in Ireland can trace back through so many generations as the Bodkins. They spring from a common ancestor of the Earls of Desmond and Kildare. The name was FitzGerald until the fourteenth century; when, having overcome their foe in a duel with a "Bandikin," or dagger, they began to be distinguished by that name, whereby they are known even to this hour, though they still preserve the war-cry of the FitzGeralds—"Crom-a-boo," as their motto.

Oliver Bodkin, of Carrowbawn, was married about 1720, and the only child of that marriage was John, called, after the fashion of the day, John FitzOliver. The idol of his parents, every wish of the poor child was gratified, every word he spoke treasured up and told, as if no child in the world ever spoke so before; and thus it was that the first ten or twelve years of his life were spent. About 1730 his mother died, and his father, in 1732, married a second time, and in 1733 became the father of a child, christened Oliver FitzOliver. The infant, according to the custom of the country, was sent out to be nursed, and the name of the nurse was Hogan, the wife of John Hogan, one of the tenants. This—the habit of a mother sending her child to be nursed by another woman, and in another house, was the custom in the last and in the first half of the present century,—the nurse taking the place of the mother; she nursed her own child also, who was called the foster-brother or foster-sister of the gentleman's child, while the nurse's husband was called his foster-father. This system of fosterage became and was a recognised institution, so to speak, in the country, and the ties of affection and *quasi* relationship that bound the foster-children to each other lasted through life. In this way it was that the first three or four years of Oliver FitzOliver Bodkin were spent. Returning to his father's house when his juvenile complaints were over, the child became the idol of his father; and as the affection for his second son increased, so did that for his eldest son diminish. Carrowbawn became insupportable to the young man, and he left it about 1737, and went to reside at Carrowbeg, close by, nominally the residence of the Counsellor,

though he resided but a few weeks there throughout the year, his business confining him more or less to the city of Dublin ; but his two sons spent summer after summer there. Their names were Patrick FitzCounsellor, the eldest, who was married and had children, and John FitzCounsellor, who was unmarried. And the neighbourhood was startled in 1738, when on a morning the sudden death of Patrick was announced. Living from year's end to year's end at Carrowbeg was the counsellor's brother Dominick, old and unmarried—a shocking-looking man, deeply pitted with smallpox ; he was blind of one eye, and thus acquired the sobriquet of “Blind Dominick.” Infamous in conduct, and desperate in character, such was the companion of John Bodkin FitzOliver in 1740, he being then in his twentieth year. Oliver Bodkin, his father, had made, it was said, his will, disinheriting him, and devising every acre he had to his son by his second marriage. The young man's mind was fast losing its balance ; he became desperate, and, come what will, he was resolved that his birthright no man should take from him. Blind Dominick, sympathizing with him, found another sympathizer, and that was John Hogan, the foster-father of little Oliver FitzOliver. Between them they agreed to murder Oliver of Carrowbawn, his wife and child ; and associated with them was one Roger Kelly,—four in all. They dined together on Friday, the 18th of September, when they discussed their plans, and finally came to the conclusion that steel was to be preferred to fire-arms. On the following night the assassins, with the exception of Roger Kelly, met, near midnight, close to the house of Carrowbawn. The watch-dogs met them coming into the yard ; but knowing them, fawned upon them, and licked their hands ; and whilst fawning and licking their hands, a razor was drawn across their throats. The murderers then entered an out-office, when John FitzOliver inquired from the farm-servants—two men and two boys—whether Counsellor Bodkin, who was coming to the assizes, had arrived, and whether he was in the house. The servants, half awakened, replied that he was not ; and falling into a deeper sleep, were noiselessly despatched, their throats being cut from ear to ear. The murderers then silently entered the dwelling-house, and stabbed the man-servant and his wife, who slept in the hall. Marcus Lynch had his throat cut by

John FitzOliver; and his mangled corpse was found next day in a pool of blood. Oliver Bodkin and his wife, who was *enceinte*, were noiselessly despatched by Hogan. But his heart relented when his little foster-child cried out from the bed—"Ah! Daddy, Daddy, sure you won't kill your little child." "Hush," said the subdued monster, and smearing him with blood, he desired him not to stir, or he must surely die. Just at the moment Blind Dominick entered, and vowed that the child must perish, and that he would kill Hogan if he did not instantly kill the cause of all their bloody work. Whereupon Hogan cut off the boy's head, and placed the trunk on his father's bosom. The assassins then left Carrowbawn, leaving no living witness of the bloody deed that had been done. The following day, when the dreadful story spread, the ghastly spectacle was visited by hundreds of the peasantry, who rose as one man to discover and cast out from amongst them the monsters, whoever they might be, who had imbrued their hands in this wholesale slaughter. Lord Athenry, a neighbouring Justice of the Peace, remembered that he had received a letter from Oliver Bodkin, complaining that his son, John FitzOliver, had threatened to murder him. Spots of blood were visible on this young man's clothes. All eyes were upon him, as he was feigning the most poignant sorrow. There he stood moaning and sobbing over the mangled corpse of his father; but the blood-stains were there, and how did they come there? He was arrested by his lordship, and sent under a military escort to the Galway jail. There he confessed to have committed the murders, and gave the names of his accomplices, who had by that time fled from the abodes of men to the neighbouring caves of Stroum, where they were at length captured by the country people, who brought them up before Lord Athenry. His lordship committed them for trial at the approaching assizes, and with them was committed, on suspicion, John FitzCounsellor Bodkin.¹

On Monday, the 5th of October, Mr. Justice Rose, accompanied by the Prime Sergeant, arrived in Tuam to hold the adjourned assizes; and on the next morning a strong military force, under the direction of Thomas Shaw, Esq., High Sheriff of the County, arrived from Galway with the prisoners. The Solicitor-General,

¹ "Pue's Occurrences," 13th October, 1741.

St. George Caulfield, appeared for the Crown, to conduct the prosecution. He had been on the Connaught Circuit, and the public had great confidence in his ability, learning, and integrity.

On Wednesday, the 7th of October, the Grand Jury were re-sworn; the learned judge delivered them a lengthened charge, and they found true bills against John FitzOliver Bodkin, Blind Dominick, and John Hogan; but they threw out the bills against John FitzCounsellor. The jury was then sworn, and the prisoners given in charge. The Clerk of the Crown read the indictment, concluding—"How say you, guilty or not guilty?" Hogan replied—"Guilty, my lord;" and he admitted that he had killed three; that he wanted to save his foster-child; but that when Blind Dominick entered, he made him cut off his head. Blind Dominick also pleaded guilty. Next came John FitzOliver, the instigator of the butchery, and he also pleaded guilty. Thereupon the learned judge, assuming the black cap, sentenced them to be hanged on the following morning. The sentence was heard by the three condemned men, all of whom admitted that they deserved the fate that awaited them. As it was the custom in those times to hang the murderers as near to the place of the murder as possible, they were carted from Tuam to Carrowbawn, and there, close to the high-road, John Hogan was first hanged from a tree. Blind Dominick came next, and he admitted that he had murdered six. Then came the turn of John FitzOliver, and with the rope round his neck he spoke this dreadful speech:—

"Two years before the murder of my father, another murder was committed by my cousin, John FitzCounsellor, of Carrowbeg, and it was that undiscovered crime that led me to commit the murder for which I am now about to die. He murdered his elder brother, Patrick, who left one son after him. On the night of that occurrence, Patrick and his brother, John FitzCounsellor, and he (John FitzOliver) slept in the same room. In the middle of the night John FitzCounsellor rose from his bed, and putting a pillow across the face of his brother Patrick, sat upon him, and thus smothered him. The death was unheeded at the time, inasmuch as the world had it that it was a sudden death."

Having thus spoken, the young man was launched into eternity.

John Bodkin FitzCounsellor was present at this dying declaration, and immediately succeeded in effecting his escape; but he was

arrested on the 22nd of October, in a bog near Tuam. True bills were found against him ; his trial, however, was postponed until the next Assizes at Galway. In the following month of March the Circuit commenced at Ennis, as it was then the custom that the last town at one assize, should be the first at the next. Mr. Justice Rose and Mr. Justice Ward were the going judges. The Solicitor-General prosecuted, and Mr. Staunton defended the prisoner. What the evidence was has not come down to us. Suffice it to say that he was found guilty. He too was unmarried. The interval between the sentence and death was at that time a short one. A priest was brought into the cell, and there heard the last confession, and administered the last communion to the condemned man. On the same evening he was led forth to the gallows green, close to the walls of Galway ; but he neither confessed nor denied the murder, though the friar conjured him to tell the world whether he was guilty or not. The wretched man, raising the cap that was drawn over his eyes, begged that he might be allowed to die in peace, that he forgave the world, but would make no further confession ; he was then hanged, and his head ignominiously severed from his body.

Thus ended those trials, and the memory of them, after a hundred and forty years, still is fresh in the minds of the neighbouring peasantry. Every circumstance connected with those deeds of blood is handed down from father to son. It is told at the firesides on the winter's evenings ; and it is firmly believed amongst them, that on dark and tempestuous nights the moans of the murdered men, women, and children, are heard on the wind that sighs across the plains of Carrowbawn ; and they say, too, that the unpitied cries of the murderers, 'mid the clank of their fiery chains, have been heard by those who have incautiously ventured too close to the deep caverns which stretch, we are told, far under the Hill of Knockmā.

CHAPTER VI.

A.D. 1745.



CRIME on the Connaught, and on the other circuits, during this quarter of the century, ebbed and flowed like the tide. And in Ireland, in this year, owing to the mild rule of the Earl of Chesterfield, then Lord Lieutenant, disturbances had disappeared. Disaffection had ceased, and that, too, whilst there was downright revolt in Scotland, and there was anything but a well-grounded loyalty in England, or in England's possessions; and the success at this momentous period was due, as we have said, to a pure spirit of justice—a gift much rarer in statesmen than talent. Actuated by this spirit, the Earl of Chesterfield received no tale on the *ipse dixit* of the tale-bearer. Alarmists were odious to him; he sometimes got rid of them playfully, as in one case, when a person of importance assured him, “Papists were dangerous,” he replied, he had never seen but one, and that was a Miss Ellen Ambrose, a Catholic beauty at his court; in fact, “she was the only dangerous Papist in the kingdom.” And she was so charmed with the mildness of the Earl’s rule, that on a public occasion, to mark how thoroughly she could appreciate his abhorrence of political prejudices, she wore a bouquet of orange lilies. His Excellency, pleased at the delicacy of the compliment, requested Mr. St. Leger, a witty young barrister, nephew of Baron St. Leger, who, as we have said, had travelled the Connaught Circuit, to say something handsome on the occasion, so he struck off the following impromptu—

“Pretty Tory, why this jest
Of wearing orange on thy breast,
Since the same breast, uncovered, shows,
The whiteness of the rebel rose?”¹

¹ Mr. O Callaghan, on the authority of two old ladies, attributes this impromptu to Lord Chesterfield.—“History of the Irish Brigade,” p. 48.

The marriage of this dangerous Catholic with a gentleman from the Province of Connaught is thus noticed in one of the Dublin papers of 1752 :

“The celebrated Miss Eleanor Ambrose, of this kingdom, has, to the much envied happiness of *one*, and the grief of *thousands*, abdicated her maiden empire of beauty, and retreated to the temple of Hymen. Her husband is Roger Palmer, Esq., of Castle Lacken, County Mayo.”

Their great-grandson, Sir Roger William Palmer, represented the County of Mayo in Parliament from 1857 to 1865. It was no ordinary achievement of a statesman to preserve peace in Ireland, when “poor Prince Charles” (we take the liberty of quoting from a work by Queen Victoria) “was a fugitive, hiding in the mountains on the sides of Loch Arkaig and Loch Sheil,” and when “the Marquis of Tullebardine (Duke of Athole, but for his attainder) unfurled the banner of King James; this was in 1745.”¹ There are few events in history that chain more strongly the interest and the sympathy of the world than the struggle of the last Stuarts—their heroism, their folly, their ruin, the deep devotion of their supporters, to whom loyalty was a religion, and the common destruction that overwhelmed them all. The Empress Queen, a daughter of the house against whom they fought, and in whose veins their blood mingles with the kindred blood of a hundred kings, drops the tear of pity over their fate. It is pleasing to see from every page of her Majesty’s work, that the true heart of a woman beats under the mantle of a queen, and that human sympathy flourishes amidst the isolation of the throne.

It was in 1746 that Galway was governed by a fierce soldier named Eyre, who made frequent application for enlarged powers to crush Popery; but his representations were disregarded, and he sought for and obtained a personal interview with the Lord Lieutenant. The safety, the Governor said, of the town of Galway was not worth a day’s purchase; but his Excellency replied, that the Galway corporation should relax their illiberal code of laws. The Governor, disgusted, returned to his official home in the west, there to rule the Papists under his sway as best he might.

¹“More Leaves from a Journal of a Life in the Highlands,” by Queen Victoria, p. 271.

Protestant settlers, or rather the sons of the settlers—for another generation had grown up—went on increasing in wealth; whilst the Catholics, hemmed round by penal laws, had the avenues to place and power closed against them. But the sons of those Catholics found no hesitation whatsoever in appropriating to themselves the daughters of their wealthy Protestant neighbours. Abduction became a matter of every day's occurrence, and when they did so appropriate them, the offended fathers found, as in Walter Tubman's case, but little sympathy from the jurors of that day.¹ These were, however, at best, but affairs of love, reminding one of the Sabines of former times; nor did the Roman Catholics confine their annoyances to acts of romantic love. By them the law and the lawgivers were alike held in detestation. Every Catholic in Connaught was conversant with the once well-known case of *Winter v. Birmingham*, where Peter Browne, of Westport, in the County of Mayo, died in 1722, possessed of a lease which he declared he held in trust for Birmingham, the defendant, which lease he devised to Birmingham, the better to carry out the trust. Nevertheless, a discoverer named Winter, in no way connected with either Browne or Birmingham, obtained possession and title to the lands on the ground that he was a Protestant and Birmingham a Catholic.²

Such also was the case of *Sir Henry Bingham v. Martin Blake*,³ where the former brought an ejectment under the Popery laws at the Castlebar Assizes against the latter, and obtained a verdict and judgment; the only ground for such judgment being that the plaintiff, who was a Protestant discoverer, desired to appropriate the lands of the defendant because he was a Catholic. These are only a few of the many cases reported in Howard's "Popery Laws;" cases which unhinged the allegiance of those whose ancestors fought for the throne in the reigns of the two last sovereigns of the House of Stuart. Who can wonder, then, if generation after generation was taught to despise alike the laws and the lawgivers? These laws had their natural results. Lawless bands, whose headquarters were at Kelly-Mount, in the County of Kilkenny, traversed

¹ Letter from W. Carey to Secretary Delafaye, January 2, 1732, Record Tower, Dublin Castle. MSS. Record Office.

² Howard's "Popery Laws," p. 11.

³ *Ibid.* 13.

the country. These were called the Kelly-Mount Gang, who went about plundering the houses of the rich Protestant gentry, and houghing and maiming their cattle; at one time they appeared in the north, at another time in the south. Their work of depredation went on; but at last they were surrounded and captured by the military in the County of Mayo. Informations were sworn before a magistrate, and they were put on their trial at the Lent Assizes for Castlebar, 1743, before Mr. Justice Rose. Warden Flood, the Solicitor-General for Ireland, prosecuted, and the prisoners were defended by Counsellor Kelly and another. Evidence was given of the outrages committed by these lawless bandittis, but the jury, who, it would appear, sifted pretty carefully the evidence, only found one man named Butler guilty, and he was taken from the dock and instantly hanged.¹ Some were acquitted, and others, who had not been put on their trial, were transmitted for trial to the County of Kilkenny.

Whilst these deeds of violence were being enacted in the County of Mayo, a contention of a more peaceable character was being carried on relating to the County of the Town of Galway, between two practising barristers of the Connaught Circuit, Mr. Dominick Burke and Mr. Thomas Staunton. They had both been nominated for the office of Recorder of Galway, and the former obtained the majority of votes. Staunton, notwithstanding, insisted that he was legally elected, and instituted proceedings, in the nature of a *Quo Warranto*, in the Court of King's Bench. From the King's Bench there was an appeal to the Court of Privy Council, where, after a long argument, it was decided in favour of Mr. Burke. This case is thus noticed in "Pue's Occurrences" of Tuesday, the 20th of September, 1743:—"Saturday last came on, before the Lords Justices and Privy Council, the hearing of the election of the Recorder of Galway, between Dominick Burke and Thomas Staunton, Esquires. After a long debate of counsel learned in the law on each side, the former was appointed."

A.D. 1745.—The journals of this year announce the death of "Counsellor Matthew Lyster, of the Connaught Circuit, well and deservedly regretted."

¹ "Pue's Occurrences," April 5, 1743.

On the Circuit during several years had practised a lawyer whose name was Matthew Concannon. Leaving his native country about the year 1740, he took his departure for Jamaica, where, joining the local bar, he soon acquired extensive practice, and in 1745 was appointed Attorney-General for the island. In the following year he died, as he was about being raised to the Bench.

A.D. 1746.—A remarkable case¹ was tried at the Roscommon Assizes in this year. John Crofton was indicted for the forgery of the will of Sir Edward Crofton, fourth baronet, who died at Mote Park in 1745. Mr. Justice French and Baron Mountney were the Judges of Assize, before the former of whom the case came on to be heard. Mr. Kelly prosecuted, and Sir Oliver Crofton, Bart., who was then a practising barrister, defended the prisoner; and it did appear marvellous to many that Sir Oliver appeared as counsel in the case, inasmuch as he himself was deeply interested in its result. Had the prisoner been acquitted, the will must have stood, and Sir Oliver would have taken the Roscommon estates which had belonged to the deceased baronet.

Counsel for the prosecution stated the case. The Croftons were a family of remote antiquity in the County of Cumberland; but they had not settled in Ireland until the reign of Queen Elizabeth.

Sir Edward, the second baronet, left at his death, in 1714, by his wife, Catherine, daughter of Oliver St. George, Esq., of Carrick, two sons, the elder of whom was Sir Edward, the third baronet, and the younger Oliver Crofton, of Lessenane, in the County of Limerick. The third baronet died in 1729, leaving Sir Edward, the fourth baronet, and one daughter, Catherine, who afterwards married Marcus Lowther. The fourth baronet died in 1745, and on his death without issue, his sister Catherine Lowther, became his heiress-at-law; but a will was found, which it was alleged had been made by the fourth baronet, devising the estates to his cousin, Sir Oliver, the fifth baronet, who was eldest son of Oliver Crofton, of Lessenane, second son of the second baronet. This will became the subject-matter of the investigation of which we treat. By it all the estates were devised to the fifth

¹ "Falkner's Journal," 28th June, 1746.

baronet, who now appeared as counsel in the case, and who defended the prisoner at the bar. A medical man named Egan was examined, and proved that prisoner had solicited him to witness the will which he (the prisoner) had forged. Egan had been in attendance on Sir Edward during his death sickness. The counsel for the prisoner denounced the case made for the prosecution; he had no witnesses to examine, and the prisoner's mouth was closed, and he could not explain any matter connected with the transaction. The jury retired to consider their verdict, and after a deliberation of nine hours, returned a verdict of guilty. The will being thus set aside, the Crofton estates descended to Mr. Lowther, who by royal licence changed his name to Crofton; and who, on the death of the fifth baronet, in 1758, was created a baronet. From him is descended the present Lord Crofton, of Mote Park, in the County of Roscommon.

The Act of Parliament which had prevented Roman Catholics from carrying arms, either in public or in private, was, as we have told in the case of *The King v. Lynch*, held merely to apply to those who were living at the time of the passing of the Act in 1691. The Crown lawyers, however, were dissatisfied at this construction of the Act; and in the year 1746, Mr. Barnewell, of Turvey, and another, both Roman Catholics, were, at the suggestion of Lord Wyndham, then Lord Chancellor of Ireland, indicted for having openly carried arms in Trim, in the County of Meath. True bills were found against them; they were tried and found guilty, but immediately received a pardon at the unanimous suggestion of the Grand Jury of the County of Meath. Papists were at once disarmed all over Ireland, and the disarming was carried out with ruthless severity in the County of the Town of Galway. But how Robert Martin, of Ballinahinch, the owner of 190,000 acres of land, accepted this construction of the law at the hands of Colonel Eyre, Governor of the Town of Galway, who caused his servant, a Papist, to be arrested and detained a whole night in prison, and the arms taken from him, we shall presently see. For not only did he first take an action against the gallant colonel, but afterwards "gave him the most unmerciful dhrubbing that ever was heard of in the streets of London." [Private letter in MSS.]

Martin was deeply attached to the Roman Church, and in 1745 was about to join in the effort to restore the Pretender to the throne of his ancestors. He had set out on his journey, but did not proceed far until he heard of the defeat at Culloden. Colonel Eyre, on the other hand, had fought under the banners of the Duke of Cumberland for the throne of the House of Hanover; and both those men, of widely different political views, were now thrown into the same arena. Martin, for political reasons, on his return to Galway, declared himself, for his own protection, a Protestant, and thereby became entitled to all those privileges which Protestants alone were entitled to enjoy. Colonel Eyre had been appointed to the governorship of the Town of Galway; and as a new broom sweeps clean, so he was resolved to sweep the streets of Galway clean of priests, friars, and nuns who infested them. The better to carry out this design, he resolved that all Papists carrying arms within the boundaries of the County of the Town of Galway should be arrested. Now, Robert Martin, being a Protestant, was entitled to carry arms, and it so happened that on the evening of the 9th of November, 1747, he sent his messenger, one Darby Brennan, a Catholic, into Galway, with a gun and a pistol to be repaired. Brennan was arrested at the West Bridge, and taken before a Mr. Disney, a magistrate, who committed him to gaol, and sent the gun and pistol to the governor. On the next morning Disney called on the governor, and read for him his notes of Brennan's examination, from which it appeared that the arms were those of Mr. Martin. Immediately Colonel Eyre despatched a messenger named Hanley to Dangan, Mr. Martin's residence, with this memorandum (but without any other note or apology): "Mr. Hanley will please take these arms to Mr. Martin, and tell him that it is far from my intention to be troublesome or peevish to any gentleman, and, therefore, I send him his arms, though in strictness they have become forfeited; but I recommend him for the time to come to put his arms into the hands of persons not subject to be questioned."

Outrageous that this governor should presume either to give him an uninvited advice or to arrest his servant, Mr. Martin turned Hanley out. In the course of the week he wrote to Governor Eyre, informing him that he had no right to seize his arms, and

requiring that they should be instantly returned. The Colonel refused to do so, and lodged them in the King's stores. The Lent Assizes were then approaching, and Martin brought an action against Colonel Eyre, to recover those arms, which in his civil bill he alleged were converted by the defendant to his own use, as follows :—

“ Robert Martin, Esq., *Plaintiff*,

v.

“ Stratford Eyre, Esq., *Defendant*.

“ By the Lords Justices of Assize for the Connaught Circuit.

“ The defendant is hereby required personally to appear before us, at eight o'clock, in Galway, on the 6th of April, to answer the plaintiff's bill for £5 sterling, being the value of one gun and pistol, being prosecutor's property, which defendant took and converted to his own use.—Dated March 30, 1748.—Signed by order.”

The case was called on. Mr. Dominick Burke, counsel for the plaintiff, put the Court in possession of the above facts, which he called several witnesses to prove.

Mr. John Staunton appeared for the defence, and insisted that his client had acted without malice; that a Papist, as the plaintiff's servant undoubtedly was, had no legal right to carry arms; that those arms were rightly taken from a Papist; and that even assuming that they had been wrongfully taken, yet they were not converted by the defendant to his own use; and he relied on the Disarming Act of 1691. He also put in evidence a correspondence between him and the Chief Secretary for Ireland, Mr. Weston, in which the latter advised him how to demean himself in the transaction. The case having closed on both sides, the Court decided that the arms must be restored to Robert Martin.¹ Intoxicated with delight, he returned to Dangan, while Colonel Eyre proceeded to London, to obtain from head-quarters instructions how he was to act under similar circumstances in times to come.

Far, however, from being satisfied with his legal victory, Mr.

¹ MSS., Record Tower, Dublin Castle. Presentments.

Martin at once followed Colonel Eyre to London, with the view of administering some wholesome chastisement to his gallant antagonist. By the merest accident he got a glimpse of the Colonel, with a Mr. Roger O'Farrell, entering a private house in St. James's Street. Martin waited for his exit; and when he did come out, he rushed at him with a heavy bludgeon, and struck him several blows on the head. He next called on him to draw his sword; and in a moment the clashing of arms was to be heard. Martin made a thrust at Eyre, who maintained a defensive position. Much skill was displayed on both sides; and at length Colonel Eyre fell bathed in his blood. Borne to his lodgings, surgical assistance was soon obtained, and the wound, which was in his groin, was pronounced not to be of a dangerous type.¹ Martin then returned to his mountain home in the wilds of Connemara.

After the Galway Summer Assizes of 1748, little arrests the attention of the inquirer for some succeeding years. We have searched in vain for trials of interest during this period. But political excitement was gone, political agitation had ceased, and maiden assizes after maiden assizes are, at this time, frequently to be met with in the records of the Circuit. In 1755, however, the agitation, which was thought to be dead, revived. Houghers of cattle once more traversed the country in bands, and the assizes' lists were once more swelled by the trials of men who took the law into their own hands, and were determined to make it an impossibility for Protestant farmers to live amongst them. Leases—such was the law—Catholics could not possess. Leases could be made to Protestants only; but of what earthly use were those leases if the farmer had every cow, sheep, and horse that he fondly and vainly hoped to dispose of at the next fair, maimed in one night? Trials for houghing cattle then became numerous, and the Crown counsel, as well as the counsel for the prisoners, made a rich harvest of that savage work of destruction.

A.D. 1766.—A case of no great interest occurred on the Circuit at the Summer Assizes of Ballinrobe in this year. A young man named Morelly had been indicted for the murder of one Patrick Hanly, a pedlar. Mr. Eyre French, of the Connaught Circuit,

¹ MSS., Record Tower, Dublin Castle. Presentments.

appeared as counsel for the Crown. It was proved in evidence that the murdered man usually carried money about his person, that he was seen by one of the Crown witnesses to go into the prisoner's house on the 1st of January, 1764, and that on the following morning he was found murdered at a place called Balliville, quite close to the prisoner's house. It was also proved that the pack which he had carried on his back was rifled, that money was abstracted from his pocket, and was found wrapt in a piece of paper in the pocket of the prisoner when he was arrested; and that on that paper were memoranda in the handwriting of the deceased.

Mr. Morgan appeared as counsel for the prisoner. He admitted that the deceased had slept in the prisoner's house upon the night in question, but maintained that the deceased opened the pack, and that on retiring to rest he handed the prisoner his money to keep for him. A servant who slept in the house swore that the deceased got out of his bed about two o'clock in the morning and went out, and that while he was out he was murdered by some persons unknown. Such was this the unromantic case, which excited little interest beyond the narrow precincts of the town of Ballinrobe. The counsel, of course, on both sides, fought for their clients as they should fight when the life of a fellow-man was at stake; but beyond this there was apparently no cause for embittered feeling. The learned judge who tried the case was Mr. Lill, then one of His Majesty's counsel, and afterwards a justice of the Court of Common Pleas. He charged the jury, leaving the matter entirely in their own hands, and giving them no information as to what he thought of the case. The jury retired, and returned in five minutes with a verdict of wilful murder against the prisoner. The judge then passed sentence of death upon him, and he was removed. Accidentally he remarked that he entirely concurred in the verdict, and counsel for the Crown replied "that everyone in court agreed with his lordship." "That is false, sir!" said the prisoner's counsel, "and you know it is false. I for one do not concur in the verdict; and you are unwarranted in making that observation!" and so saying, he flung his brief in his adversary's face. The judge either did not see or did not pretend to see the insult, and immediately left the court, and that night mounted his horse, and, accompanied by several of the bar, "rode off" to Galway. On the following

morning, Mr. French and Mr. Morgan met in a field at Forthill, in the immediate neighbourhood of the town, and there "fought a duel with horse pistols. After they had fired four rounds, and while they were loading for the fifth, it was observed that Mr. Morgan had stuffed his hand into his breeches pocket, and that there was a pool of blood at his left foot. The seconds immediately interfered; they found that his thumb had been shot off, and the counsellors left the field reconciled to each other." Of Morelly, the writer in "*Pue's Occurrences*," August 30, 1766, states that "he was executed at Ballinrobe, pursuant to the sentence."

Although the reports from the circuits are extremely meagre in those years, and although few cases of interest occurred in the Criminal Court, still, in the Record Court, there were many scenes of injustice done in the name of justice. Ejectments were brought by children against their fathers, and by brothers against their brothers; the only ground that the plaintiffs had to rely upon in such cases being that they were certificated Protestants, while the defendants were Papists.¹

A.D. 1772.—"Great rejoicings in Galway on Ladie Day in August, to thank God Almighty for passing ye Act of Parlement for to enable ye Catholics to take out leases of 50 acres of land. The Warden read High Masse in ye Parish Chapel, and Father Mark Skerrett, the bishop out of Tuam, gave holy water, and preached a grand sermon in English for ye counsellors who are here in great stock for ye assizes, although 'tis little they have to do in this place, thanks be to God."² (The Act here alluded to is the 11th and 12th Geo. III., chap. xxi., enabling Catholics to take leases of 50 acres of bog for 65 years, if not within one mile of a town.) Certainly the counsellors had nothing to do; but never was the country more disturbed than in this year, and never in the memory of man was the Galway gaol so full as it was this year. Murderers, houghers of cattle, and highway robbers were there confined, without bail or mainprise, to take their trial at the Assizes, which were to open on the 10th of August. But on the night of the 8th, the sentry on guard opened the prison

¹ Howard's Popery Laws. "Scully's Popery Cases."

² MS. Letter.

gates, the jailer was bound hand and foot, a crowd rushed in and let out the prisoners. The consequence was that not a single prisoner was put on his trial, and the Crown counsel returned to Dublin without having had more trouble than that of reading their briefs and pocketing their fees; but whether they returned those fees to the Crown we are not in a position to state. Two members of the Connaught Circuit were this year involved in litigation, the one with the other. It appears that "John Staunton, Counsellor-at-Law, and Recorder of Galway, died 2nd December, 1772; thereupon James O'Hara, Counsellor, was elected and sworn in his place as Recorder, by one party, and Martin Kirwan, Counsellor, by the other; and although judgment of ouster was obtained in the King's Bench against the former for usurpation, he disregarded the judgment, and retained office."¹

A.D. 1775.—The Dublin papers give the following, indeed the only, report of the Galway Assizes in this year:—"We hear from Galway that two of the counsellors, Denis Daly and Pat Blake, met on the parade near the quay, on which Mr. Blake struck at Mr. Daly; they then drew their swords and engaged. Mr. Blake received two wounds in his side, and Mr. Daly is unhurt; the surgeon who dressed Mr. Blake's wounds does not think either of them to be dangerous."

Duelling was not confined to one branch of the legal profession. The attorney would not hear of his client taxing his bill of costs. Such outrageous conduct was met with wholesome correction; and as sure as an attempt of the kind was made, a horsewhipping and a duel followed.

Duellists do, as a matter of course, owe a debt of gratitude to Amby Bodkin, a barrister in good practice on the Connaught Circuit, for his assistance in codifying the unwritten or common law, whereby affairs of honour had hitherto been regulated. This precious document, which was submitted to delegates at the Lent Assizes for the County of Galway, and which was accepted at the Clonmel Summer Assizes of 1777, is in the words and figures following, that is to say:—

¹ Hardiman's "History of Galway," p. 227, note.

“RULES AS TO DUELLING AND POINTS OF HONOUR.

“1.—The first offence requires the first apology, though the retort may have been more offensive than the insult. Example:—A. tells B. he is impertinent, &c. B. retorts that he lies; yet A. must make the first apology, because he gave the first offence, and then, after one fire, B. may explain away the retort by subsequent apology.

“2.—But if the parties would rather fight on, then, after two shots each, but in no case before, B. may explain first, and A. apologise afterwards.

“N.B.—The above rules apply to all cases of offences in retort not of a stronger class than the example.

“3.—If a doubt exist who gave the first offence, the decision rests with the seconds; if they *won't* decide or *can't* agree, the matter must proceed to two shots, or to a hit, if the challenger require it.

“4.—When the *lie direct* is the *first* offence, the aggressor must either beg pardon in express terms, exchange two shots previous to apology, or three shots followed up by explanation, or fire on till a severe hit be received by one party or the other.

“5.—As a blow is strictly prohibited under any circumstances amongst gentlemen, no verbal apology can be received for such an insult: the alternatives therefore are, the offender handing a cane to the injured party, to be used on his own back, at the same time begging pardon, firing on until one or both is disabled, or exchanging three shots, and then asking pardon, *without* the proffer of the cane.

“If swords are used, the parties engage till one is well blooded, disabled, or disarmed; or until, after receiving a wound, and blood being drawn, the aggressor begs pardon.

“N.B.—A *disarm* is considered the same as a *disable*: the disarmer may strictly break his adversary's sword; but if it be the challenger who is disarmed, it is considered as ungenerous to do so.

“In case the challenged be disarmed and refuses to ask pardon or atone, he must not be *killed*, as formerly; but the challenger may lay his own sword on the aggressor's shoulder, then break the aggressor's sword, and say, ‘I spare your life!’ The challenged can never revive that quarrel—the challenger may.

“ 6.—If A. gives B. the lie, and B. retorts by a blow, being the two greatest offences, no reconciliation *can* take place till after two discharges each, or a severe hit; *after* which B. may beg A.’s pardon humbly for the blow, and then A. may explain simply for the lie; because a blow is *never* allowable, and the offence of the lie therefore merges in it. (See preceding rule.)

“ N.B.—Challenges for undivulged causes may be reconciled on the ground, after one shot. An explanation or the slightest hit should be sufficient in such cases, because no personal offence transpired.

“ 7.—But no apology can be received in any case after the parties have actually taken their ground, without exchange of fires.

“ 8.—In the above case no challenger is obliged to divulge his cause of challenge, if private, unless required by the challenged so to do *before* their meeting.

“ 9.—All imputations of cheating at play, races, &c., to be considered equivalent to a blow, but may be reconciled after one shot, on admitting their falsehood, and begging pardon publicly.

“ 10.—Any insult to a lady under a gentleman’s care or protection to be considered as, by one degree, a greater offence than if given to the gentleman personally, and to be regulated accordingly.

“ 11.—Offences originating or accruing from the support of ladies’ reputation to be considered as less unjustifiable than any others of the same class, and as admitting of slighter apologies by the aggressor—this to be determined by the circumstances of the case, but *always* favourable to the lady.

“ 12. In simple unpremeditated *rencontres* with the small sword, or *couteau-de-chasse*, the rule is—first draw, first sheathe; unless blood be drawn, then both sheathe, and proceed to investigation.

“ 13.—No dumb-shooting or firing in the air admissible *in any case*. The challenger ought not to have challenged without receiving offence; and the challenged ought, if he gave offence, to have made an apology before he came on the ground; therefore, *children’s play* must be dishonourable on one side or the other, and is accordingly prohibited.

“ 14.—Seconds to be of equal rank in society with the principals they attend, inasmuch as a second may either choose or chance to become a principal, and equality is indispensable.

“ 15.—Challenges are never to be delivered at night, unless the party to be challenged intend leaving the place of offence before morning ; for it is desirable to avoid all hot-headed proceedings.

“ 16.—The challenged has the right to choose his own weapon, unless the challenger gives his honour he is no swordsman ; after which, however, he cannot decline any *second* species of weapon proposed by the challenged.

“ 17.—The challenged chooses his ground ; the challenger chooses his distance ; the seconds fix the time and terms of firing.

“ 18.—The seconds load in presence of each other, unless they give their mutual honours they have charged smooth and single, which should be held sufficient.

“ 19.—Firing may be regulated—first, by signal ; secondly, by word of command ; or thirdly, at pleasure, as may be agreeable to the parties. In the latter case, the parties may fire at their reasonable leisure, but *second presents* and *rests* are strictly prohibited.

“ 20.—In all cases a miss-fire is equivalent to a shot, and a *snap* or a *non-cock* is to be considered as a miss-fire.

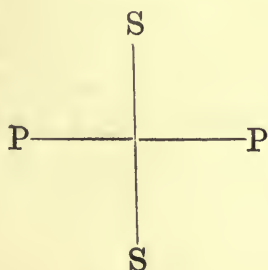
“ 21.—Seconds are bound to attempt a reconciliation *before* the meeting takes place, or *after* sufficient firing or hits, as specified.

“ 22.—Any wound sufficient to agitate the nerves, and necessarily make the hand shake, must end the business for *that day*.

“ 23.—If the cause of meeting be of such a nature that no apology or explanation can or will be received, the challenged takes his ground, and calls on the challenger to proceed as he chooses ; in such cases firing at pleasure is the usual practice, but may be varied by agreement.

“ 24.—In slight cases the second hands his principal but one pistol, but in gross cases two, holding another case ready-charged in reserve.

“ 25.—Where seconds disagree, and resolve to exchange shots themselves, it must be at the same time and at right angles with their principals, thus :—



“ If with swords, side by side, with five paces interval.

“ N.B.—All matters and doubts not herein mentioned will be explained and cleared up by application to the committee, who meet alternately at Clonmel and Galway, at the Assizes for that purpose.

“ CROW RYAN, *President*.

“ JAMES KEOGH, }
“ AMBY BODKIN, } *Secretaries*.

“ ADDITIONAL GALWAY ARTICLES.

“ 1. No party can be allowed to bend his knee or cover his side with his left hand, but may present at any level from the hip to the eye.

“ 2.—None can either advance or retreat if the ground be measured. If no ground be measured, either party may advance at his pleasure, even to touch muzzle ; but neither can advance on his adversary after the fire, unless the adversary steps forward on him.

“ N.B.—The seconds on both sides stand responsible for this last rule being *strictly* observed, bad cases having accrued from neglecting of it.”¹

Amby Bodkin was in fair business on the Circuit ; his name is to be met with here and there in “Pue’s Occurrences,” and is found signed to pleadings in the Plea Rolls of the Courts. He was Counsel for the plaintiff in a case where Sir Ulick Burke, of Glinsk, in the County Galway, was defendant. Sir Ulick and his attorney sent him and the opposite attorney challenges to fight. All the parties went out mounted on horseback, formed a quadrille, and blazed, when Bodkin fell “well hit.” Prodigious crowds gathered to see the savage encounter. Sir Ulick’s eldest son, a child of six years old, was brought out, and hoisted on men’s shoulders, “to see papa fight.”

A case of considerable interest, connected with the Penal Laws, was tried at the Summer Assizes for the County Galway, in this year. A gentleman, residing on his estate in that county, had in early life (we refrain advisedly from giving names), to save his estate, become a Protestant, and used to attend Church and receive the sacrament every Christmas Day and Easter Sunday ; but on all

¹ Barrington’s “Personal Sketches,” p. 104.

other Sundays and holidays throughout the year he was wont to hear Mass, which was celebrated in his ancient castle. But he was never seen at Mass, which was said at a table directly opposite an aperture, called in monastic language a "Hagioskope," made in the wall of the adjoining drawing-room, where he knelt, which no other person was permitted to enter. As he grew into old age, he, like Moses of old, was unable to go in and go out as in the days of his youth, and he could no longer come down to the Hagioskope. So a trap-door was cut in the floor of the room above that in which the priest officiated, to which this old man's bed was carried, and thus he was able to be present unseen at the ceremony. Drawing near his end, he sent for a Dominican friar, who received him formally into the Catholic Church, and administered to him the last sacraments, after he had made his will. The question, then, the jury at the Assizes had to try was two-fold; first, Was the will the last will and testament of the deceased? And that depended on another question—Was the deceased competent, being a relapsed Papist? For no person could make a valid will if he relapsed into Popery either before or after making the will. Counsel in support of the will insisted that there was no evidence that he had relapsed into "Popery;" whilst counsel impugning the will proved beyond all doubt that a Popish priest, dressed in black, had a pair of candles lighted, and that a white cloth was put under the chin of the dying man, and he administered to him the Communion. The case having closed, the learned judge told the jury that this being a penal statute, the burden of proving by reputation, if no higher proof was required, that this gentleman who administered something to the deceased was a priest at all, lay on the party impugning the will; the jury were bound to assume, until the contrary was proved, that everything was properly done according to law; and, for all they could tell, the so-called priest might have been an apothecary or a doctor (and doctors usually dress in black), who was administering some medicine to him, and they all knew how sick persons taking medicine were in the habit of having a towel under their chins. It also might have been that the person in black was a barber; for nothing relieves a sick man more, when his hair is matted in sickness, than to have himself cleanly shaved. As for having lighted candles, why, he might have wanted to seal a letter, or an apothecary.

cary might have required them for his chemicals, or a barber to see what he was about. He (the learned judge) would not offer any opinion other than what he had stated. It was a question entirely for the jury, who, without turning in the box, found that there was no proof that the testator was a relapsed Papist, and consequently that the will was duly executed. The charge of the learned Chief Justice Gore, Lord Annaly, who tried the case, gave satisfaction to those practising on the Connaught Circuit; for the current of public opinion had even then set in strongly against the Penal Laws.

Amongst the leaders of the Circuit in 1778 was James O'Hara, whose name is appended to many a pleading in Courts both of law and equity. The following is an interesting event in his family, told in "Pue's Occurrences":—"A few days ago, Nicholas Martin, of Ross, was married to the beautiful Miss O'Hara, daughter to Counsellor O'Hara, a gentleman in large practice on this Circuit."

A horrible case occurred at this period, which we shall relate, as it goes a great way to show the extraordinary devotion of the lower to the higher classes of society in those times. The case was that of *The King, at the relation of Dennis Bodkin, v. Patrick French*. It appears that a Mr. French, who resided near Loughrea, one of "the ould shtock," was a remarkably nice little man, but of an extremely irritable temperament; he was an excellent swordsman, and, as was often the case, was proud to excess. Some relics of feudal arrogance used frequently set his neighbours and their adherents together by the ears. Now, Mr. French and his wife had conceived a deep dislike for a Mr. Dennis Bodkin, who entertained an equal aversion to their arrogance, and took every possible opportunity of irritating and opposing them. On one occasion, Mr. Bodkin succeeded in offending the squire and his lady to an extraordinary degree; and it chanced that on the evening of that day they entertained a large company at dinner, when Mrs. French launched out in abuse of her enemy, concluding her speech with a wish "that somebody would cut off the fellow's ears, and that might quiet him."

The subject was changed after a while, and all went on well till supper, at which time, when everybody was happy, the old butler, one Ned Regan, who, according to custom, had drunk

enough, came in; joy was in his eye, and, whispering something to his mistress which she did not comprehend, he put a large snuff-box into her hand. Fancying it was some whim of her old domestic, she opened the box and shook out its contents, when lo, a pair of bloody ears dropped out on the table! The horror of the company was awakened, upon which old Ned exclaimed—"Sure, my lady, you wished that Dennis Bodkin's ears were cut off, so I told old Geoghegan, the gamekeeper, and he took a few handy boys with him, and brought back his ears, and there they are, and I hope you are plazed, my lady!"

The scene may be imagined; but its results had like to have been of a more serious nature. The sportsman and boys were ordered to get off as fast as they could, and old French and his wife were held to heavy bail at the ensuing assizes at Galway. The evidence of the entire company, however, united in proving that the lady never had an idea of giving such an order, and that it was a mistake on the part of the servants. The accused, of course, were acquitted, and the sportsman and the boys never reappeared in the county till after the death of Mr. Bodkin.¹

The year of the bloodless revolution, 1782, was unmarked by crime on the Circuit, and white gloves were presented in Galway to the Judges, and, according to the custom of the day, to each of the counsellors, a custom not likely to cost the High Sheriff a large outlay during his year of office, seeing how few and far between those maiden assizes were. Far more likely was it that the expense of the black gloves, then presented alike to the Bench and bar, on a criminal's receiving sentence, would enter into the calculations of the sheriff on his taking office! The Irish Volunteers, well armed, well clothed, and well disciplined, aided the civil power in preserving the peace of the country; and it is worth remarking that we do not find any riotous assemblies in the province, on account of the change of the Calendar which, in Ireland, was effected this year, such as did take place in England, on a like occasion, thirty years previously. In that country, churches were wrecked by angry mobs intolerant of the adoption of the Calendar of Pope Gregory XIII. The change of style, whilst in England, it filled the dock

¹ Barrington's "Personal Sketches," p. 25.

with theological criminals, and the Crown and dock lawyers with fees, in Ireland passed without a scratch in the western province, though it was otherwise in Ulster, as the records of the north-east and north-west Circuits, I apprehend, can testify. The change had worked, however, some interesting results on the civil side of the Courts; and so far as that is concerned, without launching into astronomical calculations, we shall merely observe that by the Act 24 George II., chap. xxiii., A.D. 1751, the 25th of March was to be no longer, as it had been in times past, New Year's Day, and 1752 was declared to begin on the 1st of January; and so we have the curious fact that 1751 (commencing on the 25th March, and closing on the 31st December) counted only 281 days. Ireland did not receive the reformed Calendar until the year of Irish independence. The Act (6 George I.) which abrogated the appellate jurisdiction of the Irish House of Lords was, by the 21st & 22nd George III., chap. 48, sec. 3, then repealed, and that house once more became the Court of ultimate appeal in Ireland. The Irish bar shared in the emoluments consequent on the change, and we may presume that the Connaught lawyers had a fair proportion thereof also.

In 1783, Richard Martin, of Ballinahinch, who had lately been called to the bar, chose the Connaught as his Circuit. He had previously, on 31st of May, 1779, been elected, on their embodiment, Colonel of the Galway Volunteers; and, therefore, it was that he was known sometimes as Counsellor, and more times as Colonel Martin. In the same year, Counsellor James O'Hara, Recorder of Galway, was appointed Captain of a Grenadier Company in the same regiment; and he, too, was more frequently known by his military than his civil style and title. Both those learned warriors travelled the Connaught Circuit, as also did Mr. James Jordan, of Rosslevin Castle, a representative of an old—a very old—Catholic family. The Penal Laws were then in full force, and the property of a Catholic proprietor was unsafe unless he conformed. On the convert roll, in consequence, the names of many western gentlemen appear in the Rolls Office, and amongst them is that of James De Exeter Jordan. Possessed of abilities above the average, he was called to the bar, and, as a matter of course, went the Connaught Circuit. Before, however, he laid himself out for

active business, he resolved to see somewhat of the world ; and so, accompanied by his relative and co-circuiteer, Colonel Martin, he travelled over the Continents of Europe and America ; and in Jamaica the young men spent much time together. Returning to his ancestral home in Mayo, Jordan was pained at seeing that the education of his sisters had not been attended to during his absence by his mother, and an estrangement between mother and son followed in consequence. It was in this state of things that Colonel Martin, at the bar dinner, in the presence of a number of barristers, and with his feelings perhaps a little soured by the usual acerbities of a trial which had occupied the day, reproached Jordan with not having treated his mother with due respect. Jordan, whose temper it was easy at the time to ruffle, resented the observation as impertinent and intrusive. A challenge followed. Martin was a noted duellist, and nobody could suspect him of cowardice ; nevertheless he declined to meet in deadly combat his former friend, to whom he apologised ; but all to no purpose. Nothing would satisfy Jordan short of an impossibility—an apology before the same persons before whom the charge had been made. And so the adversaries met in a field near the public road at Green Hills, half way between Castlebar and Westport. Even then Martin came unprovided with pistols ; but Jordan insisted on his using one of his own weapons. Reluctantly, on the word to fire being given, Martin fired his pistol, and the ball hit Jordan in the groin, where it lodged, and, after days of excruciating agony, death put an end to the existence of the unfortunate and misguided young man, at the house of Mr. Bourke, of Green Hills. That death caused Martin inexpressible anguish.

“ On cliff he hath been known to stand,
And rave, as to some bloody hand,
Fresh sever'd from its parent limb,
Invisible to all but him,
Which beckons onward to his grave,
And lures to leap into the wave.”

At Castlemacgarrett, the seat of Lord Oranmore, where the Colonel had been a frequent guest, he was observed with a carving

knife, as if it were a pistol, in his hand, and, in great absence of mind, exclaim—"No, I could not have missed him. Poor Jordan, I could not have missed you!"

COUNTY MAYO.

BALLINROBE SUMMER ASSIZES, 1783.

In re George FitzGerald v. George Robert FitzGerald.

CROWN COURT.

Mr. Richard Martin, of Ballinahinch, instructed by Mr. P. Randal McDonnell, applied in this case to the judge on behalf of George FitzGerald, Esq., for liberty to arrest George Robert FitzGerald, his son, of Turlough, within the precincts of the Court, which motion was grounded on the affidavit of the attorney who was also solicitor in causes then pending between the same parties in the High Court of Chancery and Court of Equity Exchequer in Ireland.

This being the first application in which George Robert FitzGerald comes before us, it appears advisable to depart from the form of the affidavit, and to tell in popular rather than in legal phraseology somewhat of this remarkable man, still remembered on the Circuit as "Fighting FitzGerald," and somewhat of his family also. George Robert FitzGerald, of Turlough, widely connected in the Counties of Galway and Mayo, represented a branch of a family whose origin is lost in the twilight of fable. A Lisbon manuscript, of 1604, traces the FitzGeralds from Ireland to France, from France to the north of Italy, from the north of Italy to Carthage, and from Carthage, in the time of Dido, to Troy. For the tradition is that when Troy, "built by Neptune," had fallen, the ancestor of this ancient race accompanied the "pious Æneas" to Latium. This, at all events, is certain, that the FitzGeralds, both Kildare and Desmond, spring from the great house of the Guerardi in Florence, and that they are noble amongst the noble, and that the house of Kildare has

maintained uninterruptedly the reputation and the power which it possessed when it came to Ireland, more than seven centuries ago ; and that the seventeenth Earl closed the princely line of Desmond far back as the reign of Elizabeth. From the Desmond branch spring the FitzGerald, of Turlough ; who, for their devotion to the royal cause forfeited their estates in the County of Waterford, whence Oliver Cromwell removed them to the Vale of Turlough, a place remarkable for its round towers, Celtic curiosities, and Druidical altars, and situated within three or four miles of the town of Castlebar. Here they were settled in the middle of the last century, when George FitzGerald (the applicant in the case now before the Court), a captain in the Austrian service, married Lady Mary Hervey, daughter of the Earl of Bristol. He was the father of two sons, George Robert, and Charles Lionel. Their mother, Lady Mary, who died in 1753, left her husband, who, during the remainder of his life, lived with another woman. George Robert, the eldest son and heir, was sent to Eton, where he acquired the reputation of being “ deeply read and passionately fond of the classical authors.” Leaving college at an early age, he entered the army, and his first quarters were in the town of Galway. Here we find him, at the age of sixteen, falling in love with a milliner, whose father and mother once moved in the upper circles of society. FitzGerald, of course, had no idea of matrimony ; but the lady had, and would have gladly been the wife of a gentleman of fortune. He met this young lady on an afternoon in a shop in Galway. She was sitting behind a counter, over which, without a moment’s reflection, he vaulted, snatched from her lips a kiss, and then retreated. She screamed ; an outcry was at once raised, and a Mr. Lynch, from the other side of the street, who, though a shopkeeper, was also so much a gentleman as to prefer fighting to calling in the aid of a constable,¹ came to the rescue. FitzGerald draws his sword ; Mr. Lynch cries, “ Oh ! my bold boy, two can play at this work ; I’ll just step across the street for my rapier.”

“ What ! you shop-keeping miscreant ! do you think that I shall fight with a tradesman ? No, sir ! I will give you a sound

¹ Archdeacon’s “ *Legends of Connaught*.”

thrashing with this, my rascal-thrasher," wielding a heavy shillelagh, which he always carried along with him, as well as a small sword.

Lynch, who was a stout, brave fellow, at once sent him a message by a Mr. French; but George Robert scorned the idea of fighting a shop-keeper, and declined to accept the challenge; he insisted, however, on an encounter with Mr. French, and he consenting, they retired to a convenient room, locked the door, and took their places. FitzGerald fired first and missed, his ball entering the wainscot. French's pistol missed fire, for the best reason—he had forgotten to prime it. George Robert, observing this, stepped forward, and offered his antagonist his powder-horn. This placed Mr. French in a very embarrassing position, from which he was relieved by persons bursting into his room on hearing the report of the pistol. In a day or two afterwards, FitzGerald fought a duel with a Lieutenant Thompson in Galway, was hit in the temple, and fell in a pool of blood. The surgeon, on examining the wound, asserted he must be trepanned. After a long time he recovered, but his brain, it is said, was affected; and many years after he was laid in his dishonoured grave this fracture was pointed to in his whitened skull by those who would fain excuse his acts of wild daring and revenge.

George Robert went, on his recovery, to reside with his father at Turlough, and devoted himself, while there, to the manly sports of the field. On his return to Dublin, from a visit to the Continent, he carried off for his wife the sister of Mr. Connolly, of Castletown, in the County Kildare. She was possessed of a fortune of £10,000, and his father agreed to give him a rent-charge on his estate. This being settled, the young couple went abroad, and, of course, sought the French capital, where their high birth procured for them an introduction to the Court of Louis XVI., where, though much restrained by the soft influences of his amiable wife, he is found playing pranks, and showing off extravagancies that only mental derangement could account for. Subsequently he returned to Ireland, and resided either at his house, 23 Upper Merrion Street, Dublin, or at Rockfield, near Turlough.¹

¹ "Autobiography of Hamilton Rowan."

In Dublin, besides fighting a duel with John Toler (afterwards Lord Norbury, Chief Justice of the Court of Common Pleas), he fired a pistol at the Right Hon. Denis Browne, and spat at John FitzGibbon, afterwards so well known as the stern Chancellor, Lord Clare. FitzGerald, in 1780, took part with those who asserted the legislative independence of Ireland, and joined the connections of his wife and mother in bringing about the great Volunteer movement.

In 1783 his levities, quarrels, and wild doings shattered the nervous frame of his wife, and she sank into an untimely grave. Her remains, followed by her husband, were conveyed with much pomp, and in the depth of winter, from Castlebar to Celbridge, in the County of Kildare. Returning to Mayo, he insulted the leader of the Connaught Circuit, Sergeant Browne, and challenged his nephew, the Right Hon. Denis Browne, to fight a duel in Westport. When arranging the preliminaries, George Robert fired at his adversary, and missed him. Browne retreated into his house—properly insisting that he would have nothing further to do with one who acted as an assassin. In the next year, 1784, he married the only daughter and heiress of Mr. Vaughan, of Carrowmore, in the County of Mayo.

Subsequent to George Robert's marriage with Miss Connolly a settlement was made, by which, in consideration of a sum of £8,000 paid to his father, the latter assigned a rent-charge of £1,000 per annum, and settled his whole estate on George Robert and on his issue *male*, and, in default of such issue, remainder to himself, the father, absolutely.

Now it so happened that George Robert had but one daughter by his first wife, and there was no likelihood of issue by his second. This position threw a power into the hands of the father, and gave grounds for hope to the younger brother, Charles Lionel, whose object it was to obtain as much influence as he could over his father, so that the inheritance should be secured to him and his heirs; hence a jealousy between the two brothers, and the desire of both to secure a personal influence and control over their weak parent. Living beyond his income, that parent failed to pay George Robert his annuity of £1,000, and a large arrear soon accrued. It would appear, according to George Robert's statement, which

has not been denied, that an amicable application was made to the Equity Exchequer, to make him, as having a prior claim to the other creditors, custodee of the estate until the debt was paid, he allowing his father a certain sum for maintenance. It would also appear that subsequently the old man, instigated by the woman with whom he lived, did his best to evade this arrangement, and that she had the wit and management to step in and receive from the tenants all the rents of the estate herself.

George Robert had made his father a gift of a house near Turlough, and fifty acres of land ; but nevertheless the latter threw himself into the power and under the influence of his younger son, Charles Lionel, and under that influence long leases, and at low rents, were granted to Charles Lionel and to a Mr. Cæsar French, who was his friend. The relations of the father and his eldest son thus became more hostile than they had previously been ; conflicting notices as to the payment of rent were served on the tenantry, and acts of violence were resorted to. Mr. French having got his lease, sent a herd of cattle from the County of Galway to stock his new farms. George Robert at once seized the cattle, sold them off by auction, and the money, without much ceremony, he converted to his own use. Mr. French hearing this, came to Castlebar to recover his property, not, however, by an action of trover, or in detinue, but, meeting George Robert close to the hotel, he rushed at him. Both drew their swords, and for a length of time fought up and down the streets, making passes and feints, to the infinite delight of the many bystanders who lined the streets. At length French got a smart wound in the hip, which roused him to double exertions, and being the heavier and stronger man of the two, he pressed George Robert so hard that the latter felt that the only way to save his life was to throw himself on the ground, as if he had fallen by chance. Of course, French was too honourable a man to take advantage of his fallen foe, and his wound now being troublesome, he was conveyed to his inn, whereupon FitzGerald, with his usual arrogance, asserted that he had conquered his antagonist.

Cæsar French, having soon after recovered from his wound, was resolved on recovering his cattle ; but even then his course

was widely different from that which would be adopted by the degenerate men of modern days. He assembled a faction of his own family, friends, and followers in the County of Galway, some of them men of rank and fortune, to the number of 400, all well armed and equipped, and proceeded to Turlough, where he encamped, determined to seize his own cattle, or take away an equivalent; but the enemy was not to be taken unawares; for George Robert had removed his stock, and had so well secured himself and his property that the Galway forces could injure neither him nor his. Thereupon Cæsar French and his army, having remained some time unmolested and idle, found it necessary to beat a retreat; George Robert then sallied forth, attacked the retreating army in the rear, and succeeded in cutting off the baggage, and making several prisoners of war, while the van of the retreating column was a mile a-head. Cæsar being speedily informed of what had taken place, collected his veterans, wheeled round, and rushed to the rescue. A pitched battle ensued, and George Robert, after a sharp encounter, abandoned his prey and his prisoners, and, with the loss of some of his own party, was routed, and with difficulty made his escape to Turlough. The conquering Cæsar in the meantime, exulting in his victory, marched in triumph with his prisoners to Galway.

Old FitzGerald having thus thrown himself into the hands of the enemies of his eldest son, the latter, by the non-payment of a certain sum for maintenance upon his father, retaliated upon him the conduct which had been pursued towards himself. His father, therefore, filed a bill against him in Chancery, and the affairs of that unhappy family became so entangled, that it is a matter of difficulty to arrive at the true position of the several parties. At that time there were two concurrent jurisdictions on the equity side of the Hall. In the Equity Exchequer George Robert had, as we have stated, what lawyers used to call a *Custodiam*, that is, he was in possession as custodee, under that Court, of the family property; so that whilst he was master of the situation in the Exchequer, his father became master of the situation in the Court of Chancery, and the Lord Chancellor issued a writ empowering him to arrest the body of his eldest son until maintenance was duly made to him. But to

attempt to execute the writ at Turlough was an impossibility, and he therefore waited until the Ballinrobe Summer Assizes, 1783, when, watching his son, and seeing him safe, as he thought, in the Grand Jury room, he applied by his counsel, as we have stated, to the judge for liberty to arrest him within the precincts of the Court, as it was impossible to do so elsewhere. The judge granted the application; the old man and his younger son proceeded to the Grand Jury room to make the arrest, when lo! he was gone; for he had had intimation of what was going on in Court, and had made meanwhile his escape to Turlough. The old man, foiled in this endeavour, resolved to proceed, at the conclusion of the Assizes, to Dublin, and at once push on matters there with a high hand, and dispose of the ultimate remainder in fee of the Turlough estates. Unfortunately for himself, he told openly what he was about to do, and on the day of his journey he had not ridden with his servant more than five miles when he was surrounded by a cavalcade, and was brought a prisoner of war, not to Turlough House, where his eldest son resided, but to a fort hard by, which was guarded by an army of two hundred men, and a battery of cannon. Here he was imprisoned during the winter. At the Castlebar Spring Assizes of 1784, George Robert FitzGerald and his brother, Charles Lionel FitzGerald, were both sworn on the Grand Jury. The latter applied to the judge for liberty to swear informations, on account of the false imprisonment of the father, against his elder brother, and to arrest him within the precincts of the Court. The application was granted; he was arrested, and true bills were found against George Robert by the Grand Jury. He immediately applied by counsel for an order to postpone the trial, stating at the same time that his father, who was a disreputable person, was not in custody at all. Richard Martin, counsel on the part of the father and younger brother, resisted the application, and submitted that if the trial were postponed, it must be on the terms of George Robert producing his father in open Court. And assuming, for the purposes of that argument, though not admitting it, that he was a disreputable person, how did that aid him in justifying a false imprisonment? "No doubt, the old man may have in his long life committed many crimes; yet his greatest against Heaven was that he had begotten such a son as George Robert FitzGerald."

The judge declined to postpone the trial, a jury was called to the box, and it was proved that the old man was sometimes chained to a muzzled bear, which George Robert had for a pet; that at other times he was tied to a cart; and, in a word, that manifold barbarities were heaped on the unfortunate father by his son. The jury, without any hesitation, found him guilty, and he was sentenced to three years' imprisonment, and to pay a fine of £1,000. The following letter to the Attorney-General, from the judge who tried the case, is of much interest:—

“ TO THE RIGHT HON. BARRY YELVERTON, HIS MAJESTY'S
ATTORNEY-GENERAL.

“ GALWAY, 4th April, 1784.

“ DEAR ATTORNEY-GENERAL,—

“ The Assizes at Castlebar portended much mischief, and produced great trouble, but ultimately the peace of the county was preserved, and the justice of the nation was vindicated.

“ George Robert FitzGerald (who had with impunity defied the power of the Chancellor) lately erected a regular fort in the neighbourhood of Castlebar, deposited his father therein in safe custody, planted six battery cannons thereon, and garrisoned it with a banditti, sometimes augmented to 200 men, and seldom reduced to less than seventy. Upwards of thirty of them were completely accoutred and armed. Hitherto they had been supplied with provisions out of the stock of Mr. Cæsar French, which FitzGerald had seized without a colour of right. Shortly before the assizes he had repeatedly gone into Castlebar attended by a number of armed followers, whose character and riotous demeanour excited considerable apprehension in the townspeople. The volunteers of that town at length sent a message to him, assuring him of their peaceableness of disposition towards him, but their determined resolution to beat him and his followers if he attempted again to go into the town with any uncommon appearance of attendance. When we arrived, we found the town in great apprehension; in a few hours after we opened our commission, the regulars marched from thence, and the preservation of the peace was left to a corps of volunteers, commanded by Mr. Gregory, a very stout, active man. On Saturday morning Lionel FitzGerald, the younger brother of George, applied

for liberty to swear informations against George on account of the imprisoning of his father, and obtained permission. A magistrate granted a warrant for the arrest of George, in which Lionel was made special bailiff, the service being too dangerous for any other person to undertake it. The two brothers were sworn in on the Grand Jury, and many of George's adherents appeared in town armed. Soon afterwards the Grand Jury informed me that the brothers were engaged in personal conflict, and demanded my interposition to prevent bloodshed. The combatants were brought before me, and afforded a scene of great abuse on both sides, and considerable address on the part of George. I lectured them severely, and threatened to commit them both into the custody of the sheriff. At that time appeared ten or eleven of George's followers, who drew up before the Court-house, and charged their fusees, denouncing vengeance against any person who should molest him. It turned out, after much altercation, that Lionel, though a very stout fellow, was afraid to make a capture in the street, and therefore attempted it in the Grand Jury room, and in return George attempted to draw his sword, but was disarmed. The matter ended on my binding them to preserve the peace, and by taking security from George to appear to any indictment that might be preferred against him, and from Lionel to attend the Court during the Assizes. On Sunday, the Castlebar volunteers seized ten stands of arms, six of which were laden with ball, belonging to George's followers, which had been concealed. On Monday, Lord Altamont, perceiving a strong probability of a riot, sent in forty of his volunteers, to put them under the command of the sheriff.

"That morning bills were found against George for the false imprisonment of his father, and immediately afterwards the Grand Jury, with a very manly spirit, marked their indignation by an application to the Bench to be advised as to the mode of procuring the emancipation of the old man. Some very curious attempts were made on me by George, which required my utmost dexterity.

"On Tuesday morning a motion was made on his behalf to put off the trial upon an affidavit of the absence of witnesses who resided in the County of Sligo. I had judicial knowledge, from his own repeated admissions in open Court, from the informations, and an affidavit, that his father was at the fortification, within two miles of

Castlebar, under the power of George. I offered to put off the trial if he produced his father in Court. He refused, and after a long debate at the bar I declined to become ancillary to a prolongation of his father's imprisonment for six months longer, and refused to put off the trial. Accordingly the trial was gone into, and a most impudent attempt was made to prove that the old man was never under the smallest degree of restraint. The evidence closed at twelve o'clock at night, and I finished my charge at three o'clock in the morning. The jury, in two minutes, found him guilty. It would, indeed, have required an uncommon perversion of understanding to have acquitted him. The magnitude of the offence, his obstinate perseverance to withhold his father even from the eye of the Court, his repeated opposition to the process of the law, his contempt of even the Court of Chancery, the danger which I have seen during the trial of open hostility, his keeping a fortress garrisoned with a banditti, concurred in evincing the necessity of at length bringing conviction to his mind that his power was inferior to that of the law. He was, therefore, sentenced to three years' imprisonment, and fined £1,000. During the course of the trial much management was necessary to preserve the peace, and by the care of the sheriff, and the exertions of the volunteers, his banditti was intimidated and kept in subjection. His conduct was replete with finesse, but occasionally, in the paroxysm of his rage, he would give vent to expressions of intemperance and indecency reflecting on the Bench and bar. So far as they related to me they were passed over unnoticed. After sentence was pronounced it was intimated to him that the production of his father might mitigate his punishment. The result was additional censure of my conduct, but not the release of the old gentleman. The next morning a complaint was made by the Grand Jury that suspicions were entertained of the gaoler's intention to suffer him to escape, and the suspicion seemed to derive probability from George's not showing the smallest disposition to soften the punishment by liberating his father. I read the gaoler a strong lecture on the nature of his duty. The business was the most troublesome and perilous I ever experienced. I am threatened with a flaming memorial, to be presented at the Castle by Mr. Connolly ; but I am fortified by the integrity of my own mind, the legality of my pro-

ceedings, and by the unanimous opinion of the bar, and the approbation and applause of the entire county, so that I entirely disregard his menaces. This town (Galway) and county are in a thorough state of peace. I long sincerely for the end of my circuit, being heartily tired of the fatigue of it. My best wishes to Madam.

“HUGH CARLETON.”

The Galway Assizes concluded on the 14th of April, and “the judges then mounted their horses and trotted at a slapping pace to Ennis, accompanied by the counsellors upon well-appointed nags, carrying their briefs in their saddle-bags, and followed by their well-mounted servants, who had charge of the leathern bottles of wine, and all were guarded by the dragoons.” Nothing occurred at Ennis beyond the usual routine of business.

The committal of FitzGerald did not bring about the liberation of the father. After four days George Robert flung a bag full of silver amongst the gaolers; and whilst they were picking it up, out he walked, the door being left open for his escape. He had possessed himself of a few cannon belonging to a Danish vessel that had been wrecked in Clew Bay, and had mounted them on a Danish fort near his house, on which was a watch-tower and place of arms, and here he had guards doing garrison duty.

Foiled in recovering the possession of his father, and disappointed in securing and punishing his brother, Charles Lionel FitzGerald proceeded to Dublin to secure from the Duke of Rutland, then Lord Lieutenant of Ireland, a military force, which application, after due deliberation, was granted. A Major Longfield was placed in command of this army, which, the commissariat department having been duly organized, moved westward. George Robert FitzGerald, hearing of the near approach of His Majesty's forces, taking his father with him, retreated into the County of Sligo, being pursued by the Mayo Volunteers under the command of Patrick Randal M'Donnell, who, though a solicitor, was colonel of the regiment. Finding himself hemmed in, George Robert, with a few followers, committed himself and his father in an open boat to the mercy of the Atlantic Ocean, and landing in a small island off the bay of Sligo, he there detained his father, who disrelishing his quarters, and anxious to recover his liberty, proposed

to his son that if he paid him £3,000, and secured to him a small annuity for life, he would convey to him the ultimate remainder in fee in the estates, and exonerate him from all blame. To this proposition George Robert assented, and they proceeded to Dublin; but the father, on arriving at his lodgings in Castle Street, refused to perfect the deeds, and set George Robert at defiance. Thereupon George Robert went to lodge in College Green; but there being a reward of £800 for his apprehension, he was apprehended by the town-major, Mr. Hall, who claimed the reward, and who for this act was challenged to fight a duel by Mr. Fenton, a Sligo duellist.

FitzGerald, now confined in Newgate, employed his mind in writing an appeal to the public, justifying his own conduct towards the aged profligate, and denouncing his brother likewise, sunk deep in the depths of profligacy. Having published his appeal, he moved for a new trial; but the motion was refused, and he must now prepare to suffer imprisonment for the residue of the term of his imprisonment—namely, three years. The prison life impairing his health, his high connections induced the Government to grant him a free pardon; so he obtained his liberty, and on the night after his liberation he proceeded to the Theatre Royal, Crow Street; and who should be in the same box but Martin of Ballinahinch—he who had been counsel against him in Castlebar? The blood of the FitzGeralds rose in his veins, and, staring Martin, he struck him with his cane; a message followed, but FitzGerald declined to meet him in Dublin. Soon after they accidentally met in the streets of Castlebar. Martin was walking arm-in-arm with his relative, Doctor Martin, and FitzGerald with his friend, of whom we have spoken, Mr. Fenton. Martin, remembering the blow he had got in Dublin, called on George Robert to draw. This he refused to do in the street, because he was lame; upon which Colonel Martin lifted his cane to strike him; but FitzGerald cried out that he was ready to fight him in a proper place. So in the barrack square, and with the leave and licence of the commanding officer, the combatants met. The first round neither was wounded; but on the second Martin's shot hit George Robert. Stunned for a moment, he then took deliberate aim, and firing, exclaimed, "Hit for a thousand." And so he was. Martin, wounded, cried out, "I'm done for," and was conveyed to the house of Doctor Lindsay. The

author of the "Connaught Legends" (Mr. Archdeacon) tells the conclusion of this affair as follows :—

"Doctor Lindsay was just after having dressed his patient, and given the usual exhortations to rest and quietness, when, to his utter astonishment, FitzGerald entered the apartment, saying, with the most perfect *sangfroid*, 'Well, Lindsay, how does your patient get on?' 'FitzGerald,' responded the doctor in an angry tone, 'this is most extraordinary, and I must say a most unbecoming place for you to visit at present.' 'Pooh! never mind, Lindsay,' said the unabashed duellist, crossing the room and opening the curtains on which the patient rested; 'Martin, my dear fellow, how do you feel?' The colonel opened his eyes, and muttered something unintelligible. 'Well, my dear fellow, keep yourself quiet; don't agitate yourself; it is a mere scratch, I understand, not worth a fig. Keep yourself perfectly quiet—I always do in such a case—and you'll be as sound as a trout in a few days. Good morning, Lindsay; see that my friend be kept undisturbed; nothing like rest for a scratch. Good morning;' and turning on his heel, he departed with the same coolness with which he had entered."

Let us now turn to Patrick Randal McDonnell, one of the chief actors in these strange scenes. He was the son of a Mr. Alexander McDonnell, a Roman Catholic gentleman, who, on his marriage, had entailed his property on his eldest son, reserving to himself merely a life interest—a settlement which bound him hand and foot, and which prevented him of course from raising money, except upon his life estate. Now, one of the most dissolute and profligate men in the Province of Connaught was this Alexander McDonnell. His son, Patrick Randal, of whom we speak, stood of course in the way of his unmeasured self-indulgence, and he, therefore, conceived an intense hatred towards him. He refused him, even when a boy, the common advantages of his birth, denied him any education, and, though not making a direct attempt on his life, sought, by privation and hardships, to break the spirit of the child and bring him to an early grave. To these cruel deeds he was further instigated by the fact, that the boy had been bequeathed, by the will of an uncle, a property of about three hundred pounds a-year. In order, then, to enable him to sell this property, which was more manageable than an entailed estate, he secured the will and drove

his son from his house ; and lest any of his relations should give him shelter, he represented him as incorrigible, wicked, and perverse. But this did not deter his maternal uncle, Mr. Patrick FitzGerald, of Castlebar, from receiving and rearing him as his own child, giving him a suitable education, and binding him to an attorney. Perhaps he was induced to give him this profession, the better to enable him to recover the property which Mr. FitzGerald knew had been devised to him, but which was now withheld, and (its value having been depreciated) was disposed of to a person who had the hardihood to purchase it. Patrick Randal McDonnell, on coming of age, set at once to work to recover this estate ; but, for a time, no shred of evidence could be found of his uncle's will. He searched in vain, until at length he received an anonymous letter, informing him that it had been placed by his father in the possession of the purchaser of the estate. Resolved to obtain the instrument by any means, he contrived to get into the purchaser's house when he was from home, broke open the box in which it was kept, and carried off the will. Outrageous at this conduct, the father swore an information against his son, who was brought to trial at the Ballinrobe Assizes of 1778, for burglary, and was acquitted, and who filed a bill against the purchaser of the estate, and showed that he had knowingly purchased the lands under fraudulent circumstances ; and the Lord Chancellor gave P. R. McDonnell a decree putting him into instant possession. This property was in the immediate vicinity of Turlough, the mansion and estate of George Robert FitzGerald. Mr. McDonnell, proud of the manner in which he had succeeded, called his residence (in token of gratitude to the Court of Chancery) Chancery Hall.

Young McDonnell's fame now preceded him : wherever he went through the County of Mayo, he became the redresser of injuries, the protector of tenants, the scourge of landlords ; he was a knight-errant of the eighteenth century. Popularity with one party, and hostility from the other, were the natural results of his conduct. Amongst those hostile to him was George Robert FitzGerald.

Now, this hostility began almost as soon as FitzGerald, about to take possession of his property, had set his foot on Mayo soil. He was the guest on that occasion of Mr. Patrick FitzGerald, son of the Patrick of whom we have already spoken, and was enter-

tained by him with the hospitality for which the west of Ireland was so renowned. Nevertheless he offended his host, by refusing to grant him the renewal of a lease. The minds, too, of these men were uncongenial; both were men of ability and learning, both generous in their way, both possessed of much that make men popular. But two suns cannot shine in the same heaven. Brave and daring, FitzGerald, indeed, possessed one superiority over his antagonist, independent of his rank and of his polished manners—he was an affectionate husband, and, twice married, he had been beloved by both his wives; while infidelity to the marriage tie was one of McDonnell's besetting sins. Over and over again McDonnell had proved himself more than a match for FitzGerald, when he chanced to catch him within the meshes of the law; skilled in the law, he was too clever an antagonist for the unpractised country gentleman. Accordingly, in self-defence, and to retaliate on a foe from whom he had suffered many defeats, FitzGerald looked about for an ally, and not finding any Irishman able and willing to throw in his lot with him, he invited an English attorney, named Timothy Brecknock, to be his law adviser and companion; and within the compass of the British Isles he could not have selected a more extraordinary or a more dangerous associate.

Timothy Brecknock, son of the Protestant Bishop of St. David's, had been a student of Jesus College, Oxford, and of one of the English Inns of Court, for he was destined in early life for the bar. He changed his mind, however, and finally became an attorney—a profession to which he was a disgrace, for he gloried in tricks, in falsehoods, and in evasions unworthy of either of the great branches into which the profession of the law is divided. And yet Brecknock was a man of ability, and of great dexterity in the defence of prisoners; and as his misguided abilities were the cause of the ruin of George Robert FitzGerald, and of his own, we shall turn back for a moment and relate a strange passage or two connected with his early career.

A man had been committed to the Old Bailey for a highway robbery; and there was every reason to believe, not only from the credibility of the person who swore the information, but also from his bearing, his acquaintances, and the conscious recognitions of

others in the prison, that the man was one of the gentlemen of the road. Accordingly Brecknock waited on him, and, stating that he was ready to become his adviser, required, as the first step towards extricating him, that he would honestly confess the whole transaction; which the fellow at once did.

He said that he had stopped a gentleman, travelling in his chariot, at half after eleven at night; that he robbed him of thirty-seven guineas; that as it was a bright moonlight night, he had taken the precaution of wearing a crape mask, but that it unfortunately fell off when in the act of forcing open the chariot door, and he was apprehensive that one or both of the gentleman's servants had marked his features; that after he had effected the robbery he rode off, winding down a lane, but, by-and-by, heard himself pursued, and found that the coachman had mounted one of the carriage horses, and was stoutly following him; that he did not like to fire any shots, for fear of raising the country, and therefore hurried on, but at length came to where the lane terminated, and was forced to ride his mare at a paling, which she leaped in good style; that when the coachman attempted to follow, his draft horse balked, and so he was safe; but, as he was in the middle of a well enclosed demesne, he thought it better to dismount and escape to London on foot—which he accordingly did, and, to his great surprise, found that his mare had made her way home as well as himself, and was standing at the stable door; that, five weeks after the robbery, he ventured to ride the same mare through Whitechapel, where he was recognised by the footman, arrested, and committed to prison. This was the substance of his confession. "Well," said Brecknock, "have you any money?" "Yes." "How much?" "Oh, about £100, which I have secreted about my person." "Well," said his counsel, "give me at once £80. I won't tell you what I will do with it; it is not, be assured, to put in my own pocket. I ask nothing from you till you are acquitted, which I am sure will be the case. There is plenty of time for me to prepare your defence. It won't be by an *alibi*. Make yourself easy; your neck is safe."

Accordingly, when the day of trial came, though the witnesses swore unhesitatingly to the identity of the prisoner—inasmuch as they recognised both him and his horse by the light of the moon—

Brecknock broke down their evidence by producing Ryder's Almanack, the best authority of the kind then, which being handed up to the Bench and jury, he pointed to the *fact* that the moon did not rise until three o'clock in the morning, just three hours and a half after the robbery had been committed. The result of this exposure was that the judge charged in favour of the prisoner; the jury, without a moment's delay, acquitted him, and he was discharged instantly from the dock.

The way in which Brecknock managed this acquittal spoke well, at least, for his ingenuity. With the money furnished by his client, he had got a new edition of Ryder's Almanack printed, exactly like the one published, in which nothing but the year's lunations were changed; and he, moreover, had taken the precaution to have half-a-dozen copies distributed through the court, to be ready for inspection in case anyone expressed a doubt of the exactitude of the one handed to the jury. A few days afterwards the Recorder detected the imposition; but the highwayman was acquitted and on the road, and the solicitor, of course, was not answerable for the misprints of an almanack.¹

¹ As a specimen of the ingenuity and ability of this person, we may as well give his speech on the trial :—

“ My Lords, and Gentlemen of the Jury,

“ I have not the least doubt on my mind that this man is innocent, though he stands here under very untoward circumstances—inasmuch as though he was in bed, and *at home* at his lodgings at the time the robbery was committed, yet he can prove the *fact* on no other testimony than that of his wife (and I know what little regard is paid to the testimony of wives witnessing for their husbands), and of a child five years of age, who is too young to be admitted to take an oath. Moreover, I do not seek to impeach the veracity of the prosecutor; his character is too well established. I say I have not the least doubt of the fact of HIS being robbed in the way sworn to; nor do I attempt to controvert the circumstance of the coachman following the robber; still I rest confident that the prisoner at the bar is *not* the person who committed the robbery. With respect to the identity of the horse, I feel that that is quite out of the question, and will assert that a horse seen by night cannot be easily known by daylight, and at the distance of five weeks. There is scarcely an instance of a horse so singularly marked that others cannot be found marked likewise; and, as a proof, there are now four horses which the sheriff has been good enough to allow me to have at hand; they are in the Old Bailey yard, standing together with the prisoner's

Before proceeding further we have to bring on the stage another individual connected with the fate of this wild man. This was Andrew Craig, or, as he was called in Mayo, Scotch Andrew. He was an intelligent young fellow, and early in life had been apprenticed to a blacksmith, but, disliking all restraint, ran away from his master, after having acquired a very superficial knowledge of farriery, of which notwithstanding he availed himself so well that he was frequently employed in the capacity of stable boy, groom, and jockey. He had been in the employment of several families in the North of Ireland, and thence passed into the service of George Robert FitzGerald, who perceived in him a daring boldness, a savage ferocity, a temper that would lead him to anything, however cruel, and an insatiable thirst for blood.

Having thus told who the leading characters in FitzGerald's service were, we shall now proceed with our narrative.

horse, of which the witnesses for the prosecution are so very certain ; and if the three witnesses agree in selecting separately the prisoner's horse from the rest, I will acquiesce in his guilt. But, my Lords, and Gentlemen of the Jury, I have more to urge in respect of the alleged identity of the MAN. The prosecutor, no doubt, is impelled by a love of justice ; but this love carries a man sometimes into an extremity of zeal. The coachman may also have a love for justice ; but, when it is taken into consideration that the conviction of the prisoner will entitle him to a reward of £40, the Court and Jury may be disposed to look with jealousy on his testimony as interested in the conviction. The footman, having heard some particulars sworn to by the prosecutor and his fellow-servant, may believe what they say to be so true as to join in the same story. The *three* witnesses all have deposed that they remember the prisoner's face from having seen it so clearly at the time of the robbery, by means of the strong light of the moon. Now, I have one witness that will undoubtedly set aside even this concurrence of evidence. It is, indeed, an uninterested witness—a silent witness—yet one that will speak home to the conviction of the whole Jury—it is *Ryder's Almanack* !!! Yes, my Lords on the Bench, and ye, Gentlemen of the Jury, I pass this almanack into your hands, and thereby you will see at once how utterly impossible it was that the witnesses could have so seen the prisoner by the light of the moon ; for you will observe that, on the night of this robbery, namely, the eighteenth of October, the moon did not rise until sixteen minutes after three in the morning ; consequently, it could not have given light at half-past eleven. And if the witnesses are found to be mistaken in such a capital point of their evidence, no part of it can affect the prisoner. My Lords and Gentlemen, I rest assured of his acquittal."

It appears that shortly before the 21st of February, 1786, Patrick Randal McDonnell was passing close to Turlough, from Castlebar to Chancery Hall, when he was fired at and wounded in the leg. Escaping, however, with his life, he swore informations against a retainer of FitzGerald's, named Murphy, who was accordingly arrested and confined in gaol, but who was finally discharged without having been brought to trial. And now it came to FitzGerald's turn to act. Taking Murphy's case in hand, he caused informations to be drawn up and sworn before Mr. O'Malley, a magistrate, against McDonnell and others, for an assault committed on Murphy, and upon these informations he procured warrants for the committal of the parties accused; but these warrants could not be executed for some time, owing to McDonnell's taking the precaution of confining himself to his house in Castlebar. At length he ventured to Chancery Hall, and on his return the same evening he was seized by FitzGerald's men, and brought, together with his followers, Hipson and Gallagher, prisoners to Turlough House, where he was kept until the following morning, when the three were sent forward towards the gaol of Castlebar under a strong escort of FitzGerald's men, of whom Scotch Andrew was the leader. McDonnell was mounted, and a man led his horse, while Gallagher and Hipson were tied together. Not far from Turlough, and while passing along the park, shots were fired from the other side of the wall at a place called Gurtnefullagh. The cry of a rescue was at once raised by FitzGerald's party, and then, by the orders of Scotch Andrew, the prisoners were fired upon. Hipson fell dead on the spot, and McDonnell was wounded in the arm. Scotch Andrew then came up, and McDonnell, in piercing tones, implored of him to spare his life, and promised him in return one hundred acres of the greenest land on his estate. "Remember, Andrew," said he, "life is all I ask—life—life—and you will recollect this blessed act when you yourself are dying."

"If you were my mother," replied the fiend, "you shall have the contents of this," at the same instant discharging both barrels, the muzzles of which all but touched the body of the unhappy man. In a moment McDonnell lay dead at his feet. Gallagher, the other prisoner, was slightly wounded, and was afterwards taken to Turlough House. Now all this, it was said, was done by the

advice of Brecknock, who foresaw that McDonnell's friends would come out from the town, but three miles off, and would rescue him out of their hands ; and he, from some confused notion of the law, advised that, if the prisoners were in custody of the law, the guard were justified in shooting them in case of an attempted rescue ; and he read, or is said to have read, to FitzGerald, in support of this proposition, an extract out of some book on criminal law. Like wildfire the report of the murders spread upon all sides. Immediately the troops of the line, then quartered in Castlebar, and the volunteers, came out furiously to Turlough, some of them remaining outside, while others entered the house to search and pillage it. Brecknock and a man named Fulton, who had acted in the capture of McDonnell, were at once taken, but after a diligent and fruitless search the volunteers were beginning to think that FitzGerald must have effected his escape before their arrival, when one of them, forcing open a clothes chest in a lower apartment, discovered him among a heap of bedclothes. He was seized and dragged out, and a scuffle ensued, one party endeavouring to murder him, and the other to drag him to justice. All the accused were at length arrested except Scotch Andrew, who escaped for the time, but was taken afterwards near Dublin.

On the same night FitzGerald was hurried to the gaol of Castlebar, and, alone in his cell, was guarded on the outside at first by two soldiers, one of whom, however, was, by the orders of Mr. Clarke, the Sub-Sheriff, soon withdrawn. This, it was said, was done with a purpose, for immediately on his withdrawal the prison doors were burst open, and a number of men, armed with pistols and sword-canes, and the musket of the sentinel, whom they had overpowered, attacked FitzGerald in a furious and deadly manner, who, though totally unarmed, made a most extraordinary and desperate defence. Several shots were discharged at him, one of which was lodged in his leg, while some of his assailants thrust at him with blades and bayonets, though he was then collared by Gallagher (who had so narrowly escaped being massacred with McDonnell) and struggling in his grasp. His front teeth were knocked out, and after he had shaken off Gallagher by great exertions, he was next assaulted with the musket-stock, with pistol butts, and with the candlestick, which had been seized by one of the assailants,

who gave the candle to a boy to hold. By one of the blows he was prostrated under the table, and while lying there, still defending himself, he exclaimed, "Cowardly rascals, you may desist. You have now done for me, which was, of course, your object." The candle had been by this time quenched in the struggling, and the jail and streets were thoroughly alarmed, so that the assailants, fearing to injure one another, and deeming that their intended victim was duly despatched, and perhaps fearful of detection, retreated from the prison, leaving FitzGerald, though wounded, once more in security. In his informations respecting this transaction, he accused five individuals principally, namely, John Gallagher, Dr. Martin, Charles and Luke Higgins, and Daniel Clarke. Of Andrew Gallagher he could say nothing except what was good. But others were concerned in the attack whom he did not know.

The whole country was filled with amazement at the doings then done in Mayo, and men looked forward with the deepest anxiety to the assizes, which were still two months distant. A Special Commission even was suggested at the Privy Council as the surest method to put a stop at once and for ever to crimes that were a disgrace to the very name of civilization. On the 10th of March the judges were appointed for their several circuits, and Chief Baron Yelverton and Baron Power were the judges named for the Connaught Circuit. Both were men of great eminence. Of Barry Yelverton, better known as Lord Avonmore, it was said by some that his qualities were not those of a good judge, for he received impressions too soon, and perhaps too strongly; that he was indolent in research and impatient in discussion; and yet it was said by others "that he was amply qualified for the Bench by profound legal and constitutional learning, by extensive professional practice, by strong logical powers, by a classical and wide-ranging capacity, by equitable propensities, and a philanthropic disposition, and that he possessed all the positive qualities of a great judge."¹ As an orator he was the rival of Flood, Grattan, Hussey Burgh, and Curran; perhaps in the command of powerful and nervous language he was superior to them all.² Richard Power was an excellent lawyer, but was far from being an orator; he was morose and fat, very learned,

¹ Wills's "Lives of Illustrious and Distinguished Irishmen," Vol. v., p. 239.

² Sir Jonah Barrington's "Personal Sketches," Vol. i., p. 257.

very rich, and very ostentatious, but of that melancholy turn of mind which in after years caused him to commit suicide.

The judges were to arrive at Castlebar on the evening of Saturday, the 8th of April. Early on that morning great multitudes went out to meet them, for in those times it was customary for all who could afford either time or blood horses to ride ten or twelve miles to welcome His Majesty's judges and the bar "coming in;" for "the coming in of the judges" was then an event spoken of for many weeks both before and after the assizes. Though still an event, it has nothing of the scenic effect that distinguished it in former days. At present, from the facility of railway travelling, each separate member of the bar can repair, as an unconnected individual, to the place of legal rendezvous. This has more convenience, but less of popular *éclat*. In the seventeenth and eighteenth centuries, however, both judges and barristers travelled the Circuit on horseback, and, for safety and pleasure, kept together on the road. The holsters in front of the saddle were filled with loaded pistols, the outside coat was strapped in a roll behind, while the dragoon-like regularity of pace at which they advanced gave the party a certain military appearance. The servants followed, mounted like their masters, and watchful of the saddle-bags, which, containing the Circuit wardrobe and Circuit library, dangled from their horses' flanks. A *posse* of fellows too, well mounted, bearing wine and other luxuries, followed close behind. At the head of this nomadic caravan rode the High Sheriff of the county with his halberdmen, armed with javelins, which they grasped in the centre, while a troop of horse brought up the rear. "In troth this was a goodly sight, and great was the deference and admiration with which they were honoured at every stage; and when they approached the assize town, the gentlemen of the Grand Jury and all the people of quality were wont to come five or six miles to bid them welcome. And when they met, the greetings and congratulations and friendly reciprocities were conducted on both sides in a tone of cordial vociferation that is now extinct. For the counsellor of that day was no formalist, neither had too much learning attenuated his frame, nor prematurely quenched his animal spirits; but he was portly and vigorous, and laughed in a hearty roar,¹ and loved to

¹ Monsieur Guillaume Durand, in his directions to a "Counsellor how to

feel good claret disporting through his veins, and would any day prefer a fox chase to a special retainer; and all this in no way detracted from his professional repute, seeing that all his competitors were even as he was, and that juries in those times were more gullible than now, and judges less learned and inflexible, and technicalities less regarded or understood, and motions in arrest of judgment less thought of. The conscience of the counsellor being ever at ease, when he felt his client was going to be hanged, upon the plain and obvious principles of common sense and natural justice, so that circuit and circuit business was a recreation to him; and each day through the assizes he was feasted and honoured by the oldest families of the county, and he had ever the place of dignity beside the host, and his flashes of merriment (for the best things said in those days were said by counsellors) set the table in a roar, and he could sing, and would sing a jovial song, too; and if asked, he would discourse gravely and pithily of public affairs, being deeply versed in State concerns; and, perhaps, a member of the House of Commons; and when he spoke, he spoke boldly, and as one not fearing interruption or dissent, and what he said was received and treasured up by his admiring audience as oracular revelations of the fate of kingdoms until the next assizes. Few country gentlemen would enter into an argument with the counsellors, who were ready at any moment to take any or either side of any question extempore, and divide it into three distinct points of view, and bring a half dozen knock-down arguments to bear upon each.”¹

On the following day, Sunday, the Church of Castlebar was filled to overflowing, for in those days the Bench, the bar, and the Grand Jury were all, nominally at least, Protestants; and it was generally the ablest divine that was invited to preach the Assizes

behave himself,” directs, that “the counsellor should be in court early in the morning before the arrival of the judge; that he should address some other counsellor on the other side of the court in *loud* tones before the crowd, wishing him a ‘good morning;’ that he should then look round as if it were in defiance, and laugh at some saying of another counsellor *aloud*; that on the entry of the judge, he should remove his cap, and make an obeisance proportioned to the dignity of the judge; that he should be seen whispering the judge when he would leave the court.”—“Preface to Year Books, *tempore* Edw. I.”

Curran’s “Sketches of the Irish Bar,” Vol i., p. 274.

sermon. Accordingly, it was arranged on this occasion that the Hon. and Most Rev. Dr. Burke, Protestant Archbishop of Tuam, should on the “Assizes Sunday” occupy the pulpit of the church of Castlebar; and glad was the rector to have obtained the services of so eminent a preacher, on an occasion when a Yelverton, a FitzGibbon, a Blossett, and a Stanley were to be present. It was arranged that the Archbishop was to arrive at the church at half-past eleven o’clock, half an hour previous to the commencement of the service. But, alas! no Archbishop came; he had been taken suddenly ill the night before, and within five minutes of twelve a messenger in breathless haste from the Palace of Tuam arrived to announce that the rector must himself preach the sermon. Now, the rector, even if he had prepared for the occasion, was at best a bad speaker; and in this instance—worse still—he had had no preparation. Alas, thought he, how they that sleep in death are to be envied! Big drops of perspiration were rolling in his agony of despair adown his face. There before him sat the judges in their judicial robes; there was the Attorney-General; there the whole strength of the bar; and he, wretch that he was, who was in the habit of addressing only a country congregation, never numbering more than five-and-twenty, was now to preach to so numerous and so critical a congregation. But near the altar was one whose black dress and white cravat betokened that he was a clergyman. The rector recognised him, for they had been fellow-students at an English University, and he was now in Castlebar, with many others, to hear the trial of George Robert FitzGerald. The rector, on chance, pencilled a note to his *quondam* friend, begging of him to ascend the pulpit and make the most of the occasion. For aught he knew, his friend might have preached “Assizes sermons” before; but whether this be so or not, the reply was in the affirmative, and he retired to the vestry, while there was yet time, to string together something worthy of the occasion. At last the moment came, and he ascended the pulpit to the great joy of the man who was fortunate in having escaped so much misfortune. The preacher gave out, from the 7th chapter of the Gospel of St. Luke, the following text:—

“But the Pharisees and the lawyers rejected the counsel of God

against themselves." The applicability and the severity of the text enchained the attention of his hearers. He showed how the Jewish lawyers had heaped uncertainty and obscurity upon the laws that were given to Moses in Horeb, and how their conduct had drawn down upon them the rebuke of the great Lawgiver of the New Law, when He addressed them in the memorable words, "Woe to you, lawyers." And yet, he said, there were great lawyers in the old times amongst the Jews; need he remind his hearers that the commentaries on the Mishna and the Gemara, being the two divisions of the Talmud, were from the pens of the great Hebrew lawyers. He briefly alluded to Tribonian and his connection with the immortal code of the great Justinian, and showed how that code had been preferred by the ecclesiastical lawyers of the middle ages to our own common law, and how it formed the basis of the laws of France, Spain, Holland, Belgium, and of many of the most polished countries in the world. From the civil to the canon law of the Church of Rome there was only a step. To the canon law lawyers the world is deeply indebted: for almost all the forms in lay courts which contribute to establish, and continue to preserve, order in judicial proceedings, are borrowed from the canon law. And he showed how, without fee or reward, nominally at least, the ecclesiastical lawyers argued their clients' causes. He (the preacher) often in former years had watched the stuff-gown lawyers in the courts of Westminster Hall, wearing the habit of the monk, for their gowns were ecclesiastical robes; and he had thought of times gone by, when the lawyer-monks carried the open purse over their left shoulders, slung from a broad tape, into which the satisfied clients were wont stealthily to drop golden pieces as a grateful *honorarium*. That purse is now closed, but it is still slung, as in times past, over the left shoulder of every stuff-gown lawyer. Inscribed on the Calendar of the Roman Saints, were the names of lawyers, however few. There was St. Swithin, Lord High Chancellor of England; and there was St. Evona, a lawyer, to whose name was dedicated a chapel in Rome; who, deploring that the profession to which he belonged had no patron saint, made a pilgrimage to Rome, there to entreat the Pope to give the lawyers of Brittany a patron. His Holiness replied that he knew

of no saint that was not disposed of to other professions ; at which the suppliant grew sad, and begged him to think of one. At last the Pope proposed to St. Evona that he should go round the Church of St. John Lateran blindfold, and after he had said so many Paters and Aves, that the first saint he laid hold on should be his patron ; which the good man willingly undertook, and at the end of his Paters, he stopped at St. Michael's altar, where he laid hold (oh, too shocking to contemplate) not on St. Michael, but on the devil under St. Michael's feet, and crying out at the same time, " This is our patron ; let this be our patron." So being unblindfolded, and seeing what he had done, he returned homewards and died ; and so the bar of Brittany remains unhallowed amongst the professions even to this hour. [Here one of the judges appeared struggling with laughter.] Colouring deeply, the very reverend and angry preacher would remind them that there were wicked judges in the old times before us ; and our Saviour, in St. Luke's Gospel, chapter xviii., speaks of a " judge in a certain city, who feared not God and regarded not man." But he thanked God that those of their day strictly obeyed the laws that were given them to observe. And he showed how there were great judges in Israel, even from the days of Joshua, the son of Nun, who was filled with wisdom, to the days of Saul. The glories of being a righteous judge won for Solomon the fear and the love of the children of Israel, " for they saw the wisdom of God was in him to do judgment." He then reminded them that the very robes they wore were sacred—that the scarlet and the violet had been the colours worn by the judges ever since the robes of Aaron were transferred to Eleazar, his son and successor ; that the ermine tippet had descended on the chief judges from the Chancellors of the Roman Church, who took it from the tribe of Levi, and that the ermine mantle had always been regarded as typical of purity. He called on them to remember that they were not to be led away by the allurements of power, and that there was once a Chief Justice in England, Chief Justice Gascoigne, in the old Catholic times, who dared to commit the Prince of Wales, afterwards Henry V., to prison for having been guilty of a contempt of his sacred person. He would not speak of the " bribe-devouring judges of Hesiod," nor of Bacon (Lord Verulam), but he would point to the unstained purity of the ermine

in Ireland, and he prayed God to give wisdom to the wise. Lastly, he reminded them that the highest reward prepared for the twelve apostles hereafter is to sit on twelve thrones, judging the twelve tribes of Israel. Such was the sermon preached, and so was the rector saved.

On the following day the Commission was opened by the Lord Chief Baron and Mr. Baron Power. The Grand Jury were called to the box, Sir Neal O'Donel, of Newport, being their foreman, and true bills were immediately found against the six rioters who were accused of having assaulted George Robert FitzGerald, as before described, in the gaol of Castlebar, on the 21st of February, 1786. Their names, occupations, and residences respectively were:—Andrew Gallagher, apothecary; John Gallagher, coroner; James Martin, M.D.; Edward Martin, gentleman; Luke Higgins, tanner, all of Castlebar; and Charles Higgins, gentleman, of Westport. The Grand Jury also found true bills against George Robert FitzGerald, Timothy Brecknock, and others, for the wilful murder of Patrick Randal McDonnell and Charles Hipson, on the 21st of February, 1786. An application was immediately made by counsel to postpone the trials on the ground that George Robert FitzGerald was unable, owing to the wounds he had received in the riotous assault in gaol, to stand his trial. The application was granted, and the trials were postponed accordingly, until the 7th of June.

On the 6th of June following, the judges arrived at Castlebar, and, at the proper time, they opened the Court pursuant to adjournment; the trials of the Higginses, Martins, and Gallaghers were at once proceeded with. They were all, however, speedily acquitted, on the alleged ground of discrepancy between FitzGerald's first and second sworn examinations, as well as because an *alibi* had been clearly proved for each. A loud expression of joy burst from the thronging crowd.

The counsel for the prosecution were the Attorney-General, Messrs. James O'Hara, Francis Patterson, and St. George Daly. Counsel for the prisoners, Messrs. John Blossett, George Joseph Browne, and James D'Arcy.

TRIAL OF GEORGE ROBERT FITZGERALD AND
TIMOTHY BRECKNOCK.

On the 10th of June, the trial of George Robert FitzGerald commenced. Chief Baron Yelverton and Baron Power ascended the Bench, and a jury was sworn. The Attorney-General, and Messrs. O'Hara, Patterson, Richard Martin, Ulick Burke, and St. George Daly were counsel for the Crown; while Messrs. Stanley, Colbeck, D'Arcy, and Kirwan defended the prisoners.

FitzGerald was arraigned, "for that he, with another, not having the fear of God before their eyes, but being moved by the instigation of the devil, did, on the 21st of February, 1786, of his malice prepense, wilfully, traitorously, and feloniously *provoke, stir up, and procure* one Andrew Craig and a number of others (some of them at present unknown) to slay and murder one Patrick Randal McDonnell, and one Charles Hipson, then and there subjects of the King, and who, by the aforesaid provocation, stirring up, and procurement, were assaulted at *Gurtnefullagh*, with certain guns of the value of five shillings, each and every of the said guns being charged with gunpowder and leaden bullets, and several mortal wounds inflicted on them of the depth of four inches, and the breadth of half an inch, contrary to the peace of our lord the King, his crown and dignity, and against the form of the Statute in that case made and provided, of which mortal wounds they then and there instantly died," &c.

Mr. Stanley objected to the prisoner at the bar being tried for provoking and stirring up others to commit murder, until these were first tried and found guilty of the murder. Mr. FitzGerald was about being tried as an accessory before the fact, and that before the conviction of the principal. Even in cases of high treason, where accessories are principals, the principal must be tried before the accessory, and as soon as the principal is convicted, then the accessory is tried as a principal.

The Chief Baron owned he felt some difficulty on the question, whether Mr. FitzGerald's offence, as laid in the indictment, was an accessorial offence, or a distinct and substantive one. If the latter, there was no objection to the trial proceeding; but if his offence were only accessorial, then he ought not to be put on his trial until the

principals were convicted ; and therefore he entreated the Attorney-General, lest any room should be left for doubt, to consent to discharge the jury in this case, and to try one of the principals first.

The Attorney-General said that the offence for which the prisoner was indicted was made a distinct substantive offence. The Act of Henry VII. goes so far as to make the procuring of the death of a subject tantamount to procuring the death of the King. So that the accessory becomes as it were a principal in the same way as he would in high treason. The Act does not declare the crime of murder to be high treason, but attaches the penalties of high treason upon the persons of those who shall be convicted of the offence. Suppose the party committing the murder to be an idiot or lunatic, or suppose him not amenable ; suppose that he is killed in the affray, will it be contended that the man that incited the committal of the murder is not to be tried at all ? But now the prisoner has been given in charge to the jury, and he must be either convicted or acquitted ; and he should have made this objection before he was given in charge, and by permitting himself to be given in charge, he has waived the objection.

The Court ruled with the Attorney-General, and the case proceeded.

The Attorney-General (FitzGibbon) stated the case. The two important witnesses against FitzGerald and Brecknock were Andrew Gallagher, one of McDonnell's party, who had escaped being murdered, and Scotch Andrew, the murderer. Gallagher deposed that, on the night on which he (along with McDonnell and Hipson) was brought to Turlough, and confined in a room over the stairs, he overheard, through a broken pane, FitzGerald and Brecknock conversing and giving directions to the men, and that one of the directions was, " that if they saw any rescue, or chance of a rescue, to be sure to shoot the prisoners and take care of them ; " that when these orders were given, FitzGerald said to Brecknock, " Ha ! then we shall soon get rid of them now ; " and Brecknock replied, " Oh ! then we shall be easy indeed ; " and that after the guard was arranged, FitzGerald called out to Scotch Andrew, " Andrew Craig, be sure you kill them ; do not let one of the villains escape."

Scotch Andrew next ascended the witness table, and when this cold-blooded murderer made his appearance as an approver, a shudder seemed to pervade the entire crowd. Nothing daunted, however, he gave his testimony with the coolest effrontery. He not only corroborated Gallagher's evidence, but also swore to the private directions given by the prisoner, FitzGerald, as the party was moving away from Turlough House. He then swore that the plan chalked out for his victims' destruction was this: to charge a gun with snipe shot, and then to send on a man with it, who should fire from the park wall, making no distinction between friend or foe, as the shot would smarten them up to their business, and could do little harm to their party, whilst some of them might think it a real rescue. This plan, he stated, was accordingly acted upon. He next admitted, without a shadow of remorse for the terrible deed, that he himself shot McDonnell through the head, as he lay maimed and defenceless on the bridge of Kilnecarra.

His statement was strengthened by the evidence of another of the accomplices, as well as by that of the magistrates, who had taken his voluntary confession.

For the defence, three warrants, signed by Mr. Bollingbroke, J.P., and Mr. O'Malley, J.P., against McDonnell, Hipson, and others, and directed to one William Fulton specially, were put in evidence, with a view to show that the murdered men had been legally in the custody of Fulton.

The Rev. Mr. Henry, the Presbyterian minister of Turlough, now came forward to prove what he was pleased to designate the insolence of Gallagher and Hipson on their being arrested and conveyed to Turlough. He also swore that accommodation and refreshments were offered to them, and that although he was up early on the morning of what he termed *the accident*, he had heard no directions given to the guard.

He was followed by a man named Love, whose testimony was that he saw about twelve armed followers of McDonnell inside a wall adjoining Gurtnefullagh, early on the fatal morning, and that he heard them state, as he lay hidden behind a thorn bush, that if McDonnell came, they would soon free him by shooting FitzGerald. As for George Robert FitzGerald or Brecknock, they were not present at the murder at all.

The defence closed, and the Chief Baron charged the jury in a manner that reflects but little of credit on his memory. He was followed by Baron Power, whose great information as a criminal lawyer gave somewhat of weight to every remark that fell from him in his charge. Suffice it here to say, that the Bench conducted the trial with little or no dignity, and that FitzGibbon, the Attorney-General, surpassed himself in acerbity and flippancy. On one occasion he so far forgot himself, or rather his station, as to call Mr. Stanley (the leading counsel for Fitzgerald) Mr. Tautology Puzzlepate. Stanley retorted; and the law lost much of its dignity when two such men—two leaders in the profession—were allowed thus to exercise their wit in the presence of the representatives of justice, at that awful moment when the grave was yawning beneath a fellow-creature.

It was eleven o'clock at night on Friday, the 9th of June, when the jury retired to consider their verdict; and yet so absorbing was the interest felt in the trial, that the court-lights still showed a throng of faces, pale indeed and wearied, but wearing an expression of intense eagerness for its issue, such as they exhibited at its outset.

FitzGerald saw the jury retire, and, for the first time in his life, he displayed a symptom of fear. It was but for a moment. Instantly resuming his confidence of expression, and bowing to some persons whom he recognised in the Court, he leaned back with apparent composure to await the return of the jury. They detained him but a short time, and in less than a quarter of an hour came back with a verdict of *guilty*.

On hearing this, which was received with dead silence, he bowed to the Court, and was conveyed with a firm step back to prison.

Brecknock on the next day was put on his trial; the old man fell on his knees in the dock, and prayed for comfort from Heaven. The case against him was, that it was he who had advised George Robert FitzGerald to entrap McDonnell and Hipson into his power by means of the warrants granted for their arrest, and that it was he who had planned the mock rescue, and had advised that McDonnell and his party should be shot if a rescue were attempted. The jury found the wretched man guilty, with a recommendation

to mercy on account of his advanced years. But the Chief Baron held out no hope, and was even severe upon him in passing sentence. "Unfortunate old man," said he, "happy had it been for you that you had never known law at all, or that you had known it better. But for your advice, the gentleman now at your side would not have been brought to the wretched situation in which he stands, or to the dreadful end which must now await him. Miserable man, you are fallen a victim to your own subtleties, and become the dupe of your own cunning. The venerable appearance you have assumed, and the sanctity you affect, I fear are but a disguise for your wickedness. The law, which you endeavoured to pervert, has furnished the detection of your crime, and will shortly award the punishment which attends your conviction. Your jury, from a mistaken lenity, have recommended you to mercy, not that they doubted of your guilt, but that they pitied your age and infirmities. Your crime is by many degrees of the deepest and blackest dye, and it only remains for me to pronounce the dreadful sentence." He then passed sentence of death on both FitzGerald and Brecknock.

Now, one word on those trials. Leaving Andrew Craig's evidence out of the question, as the informer, who was the actual murderer, and whose life was saved for his information, there was no evidence, save that of Gallagher, to prove that FitzGerald had ordered the slaughter of the prisoners; and it is extremely improbable that FitzGerald and Brecknock, aware that Gallagher was in a room overhead, would have been so imprudent as to give such directions within ear-shot of him. Neither is it likely that Fulton, who was in that room, and must have heard these directions as well as Gallagher, would not have informed his employers that they were overheard. Moreover, a servant-maid, for the defence, testified that, though there was a pane of glass broken, yet the hole was fastened up with a board. Is it at all likely that if Gallagher had overheard this conspiracy to have them all shot, he would not have told M'Donnell and Hipson? And would they not, all three, before going, as they knew they were, to certain death, have loudly remonstrated against being forced along to inevitable destruction? It is difficult to read the trial (which was soon after published) without coming to the conclusion that were it to take place in the

present day, the evidence of Gallagher would be much doubted, and the judge would not direct a jury to find a verdict of guilty, when this evidence was corroborated only by the testimony of such a ruffian as Craig, who, though the actual murderer himself, was left untried, and allowed to give his evidence against accomplices.

FitzGerald's address, after sentence was passed on him, was calm, and delivered with a firm tone. He said:—

“I beg leave to trouble your Lordships with a few words. I shall be very short. I do not mean to cast blame anywhere. I accuse no one. From the evidence the judges could have given no other charge—the jury could have found no other verdict. I think the verdict of the jury a just one, according to the evidence produced; but I did not think such evidence could have been produced. I did not think such charges could have been made against me, or I should have been better prepared. I had no idea of being found guilty. There are some family affairs which I have been endeavouring to settle, and which in truth are not yet finished, that I could have wished to have completed. All that I request of your Lordships is, to give me the longest day possible, that I may be prepared to meet my God. However guilty I may be conceived within a narrow circle, I hope, in a higher one, the unprejudiced part of the world will think me innocent: those who know me from my earliest life know me incapable of such an action. I never feared death; nor am I afraid to meet it in any shape—in the most formidable, even an *ignominious* death. It may be thought I wish to solicit pardon. I would not accept of pardon, after being found guilty by such a jury, because I know I could not face the world after it. It has been suggested, and I understand that the report prevails, that I wish for time in order to commit suicide. As a worldly man I never feared death; and, as a Christian, which I hope I am, and a good one, what sort of a passport would that be to the place of eternity? I forgive everyone; and though I assert my innocence, I do not mean to say that I have no sins: I have many which overwhelm me, and I only request time that I may make my peace with God.”

The sun went down to rise no more on the criminals, who were informed they must die on that night. “It would appear as if the High Sheriff, the Crown prosecutors, and all the gentry of Mayo, were afraid that if there were any delay, a reprieve might have been procured by means of his high connections.”¹ Brecknock was brought out the first to the gallows, and the conduct of the old man was serene and dignified. Having said the Lord's prayer in Greek, he drew the cap over his face, and was launched into eternity.

¹ “Freeman's Journal.”

George Robert FitzGerald, as he stood in the dock, was a pitiable sight ; he was arrayed meanly and without any care ; his coat was a stained and worn uniform of the Castletown Hunt, his waistcoat was soiled and unbuttoned, his stockings and shoes were coarse and dirty, and his hat was tied with a hempen cord. Sad was the contrast to the appearance he presented, when in earlier and happier years he had returned from the Court of France ! Then his figure—light, elegant, and distinguished—was set off with all that taste and wealth could bestow. He was then the envy of his own sex, the admired of the other. What a contrast, alas, to the spectacle of that hour ! He was next led forth ; it was then eleven o'clock at night. The sheriff permitted him to walk from the gaol to the place of execution.

He reached the scaffold with a hurried step, and asked in an eager tone, "Is this the place ?" Being told that it was, he sprung up, shook hands rapidly with several of his former friends, who in his last hour stood about him, flung off his cravat, opened his collar, and adjusted the rope with his own hands. He then shook hands with the Presbyterian minister, Mr. Henry, and begged of him to be brief in his prayers ; after joining in which for a few minutes, he called on the executioner to perform the office well, and immediately after, and rather unexpectedly, flung himself off ; but his sufferings were not yet ended, for the rope broke, and he was precipitated to the ground. Springing to his feet, he cried, "My life is my own." "No," exclaimed the Right Honourable Denis Browne, "not while there is another rope in Mayo, and you shall have one strong enough, and speedily too."

Another rope was produced, and after the lapse as it were of an hour, which he spent in prayer, he rose to prepare for death ; it was then closing on midnight, and a darkness unusual in the month of June overspread the face of the heavens ; torrents of rain, which extinguished the lights, descended ; and it was with difficulty that those nearest to the scaffold could see the hangman adjusting the rope ; but a vivid flash of lightning, followed by a burst of thunder, which rolled and reverberated from the surrounding hills, lightened the darkness of that dreadful night ; another flash—another—and another revealed the last struggles of George Robert FitzGerald.

His remains were interred in the family vault in the ruined chapel adjoining the round tower of Turlough. Charles Lionel FitzGerald, his brother, then succeeded under the entail to the estates, and continued to enjoy them until his death in 1805, when he, too, was laid in the same tomb. During those nineteen years, the coffin of George Robert FitzGerald had mouldered into dust; but the skeleton was left, and on his finger was his first wife's ring, which some time after got into the possession of a Mr. Richey, with whom it remained for many years. Of those trials, if so they may be called, and convictions, much has been written; and it is said to be the only case in the books where an accessory to a murder was found guilty on the evidence of the principal. That he well deserved his doom no man can deny. Yet it was the opinion of the sarcastic Judge Robinson, that "his was the case of a murderer murdered!"

And now about the Right Honourable Denis Browne. He was the second brother of the third Earl of Altamont, who became first Marquis of Sligo. He was married to a sister of Sir Ross Mahon, and Sir Ross Mahon was married to his sister. When a young man, he is said to have been extremely handsome; but he soon became corpulent, and careless and slovenly in his dress. His first contest for the representation of the county was with John Bingham, afterwards Lord Clanmorris, who was likely to succeed. In this dilemma he applied for advice to his uncle, James Browne, the Prime Sergeant, who thus, in the spirit of that age, advised him: "My dear Denis, there is only one remedy for you; you are now one and twenty years of age, and you have never yet been on the sod! Why, that one fact must lose you your election. You must fight, my dear boy, and that on this very evening. I believe you think I have nothing but law in my head! You must knock down Bingham." "What," replied Denis, "is it to knock down a man that never offended me—with whom I have no dispute?" "Oh, my dear fellow, that is nothing here or there." And so, following this excellent advice of his learned uncle, the Prime Sergeant, Denis Browne met Bingham on the steps of the court-house, and, without provocation of any kind, knocked him down, fought him in half an hour in the barrack yard, was wounded, excited the well-deserved sympathy of the electors, and won the

election ! He rose rapidly into power, his brother, the Marquis, supporting him with all his influence and talent. The absolute Chancellor, Lord Clare, and his successor, Lord Redesdale, allowed him to act as dictator for Mayo for many years. The judges might sentence criminals to prison, but if "the Right Honourable," as he was called, wished it, the prison doors were opened, and the prisoner was set free. As to Government patronage in the County of Mayo, it was entirely at his disposal ; he could give place, and could take it away ; and so things lasted until 1806, when, on the Whigs coming into power, with George Ponsonby as their Lord Chancellor of Ireland, he fell from his pride of place. Their administration lasted only for a year ; nevertheless the new Tory Chancellor, Lord Manners, whose period of office was from 1807 to 1827, never restored him to his full former power in the government of the county, and thenceforward he led the life of a squire of immense influence until 1826. He died in 1828. His name lives to this day in Mayo, fresh as when he was in the pride of his power eighty years ago.¹

The Summer Circuit of 1786 immediately following the trial of George Robert FitzGerald at the adjourned Spring Assizes, presents but few features worthy of notice. The Assizes for the Counties of Roscommon and Sligo were maiden ones ; so also were those of the County of Leitrim. Free from crime as this last-mentioned county had been, there yet occurred an unhappy difference between two gentlemen attending these Assizes at the county town of Carrick-on-Shannon, which caused subsequently the murder of the one and the death of the other on the gallows. The facts are shortly these. Mr. Robert Keon was an attorney practising in the County of Leitrim, and Mr. George Nugent Reynolds was a gentleman of fortune and position in the same county. Some contradiction having taken place between them, Mr. Keon horsewhipped Mr. Reynolds outside the court-house, in which the Judge of Assize was at the moment administering justice. Magistrates, too, were present ; yet neither party was arrested—for no Connaught gentleman would have then, for an instant, thought of putting a stop to an encounter by so ignoble a proceeding as

¹ Hamilton Maxwell's " Wild Sports of the West," p. 187.

binding over the parties to keep the peace. For the moment this affair terminated with the horsewhipping, but later on sad events occurred, which we shall relate subsequently in chronological order.

This was the only incident worth remembering at the Carrick Assizes, and the judges continued their Circuit. At Ballinrobe Assizes, one James Foy, who had been acquitted at the adjourned assizes but two months before, at Castlebar, of the murder of Patrick Randal McDonnell, was now put on his trial "for having been an accessory to the same murder." The prisoner pleaded that he had already been tried and acquitted (*autre fois acquit*), and that being acquitted of the principal offence, he could not now be tried as an accessory. The Crown insisted that he could, and that the offence for which he had been acquitted, and that for which he was now arraigned, were different substantive offences. The presiding judge, Mr. Justice Bradstreet, considered this a very nice question, and said he would, in deference to the opinion of other judges, direct the jury to find for the Crown, although he felt he was wrong in doing so. He differed from other learned judges, and declared that he would, therefore, be glad that a writ of error were taken, and the law finally settled on the point. The jury then found as directed, a writ of error was brought, and judgment was finally given in favour of the view taken by Sir Samuel Bradstreet, and the prisoner was discharged.

The Crown lawyers on this occasion were Messrs. James O'Hara, Patterson, and St. George Daly.

Counsel for the prisoner were Messrs. Charles O'Hara, Ulick Burke, and George J. Browne.

This was the last of the trials for the murder of Patrick Randal McDonnell. Scotch Andrew died soon after of a loathsome disease in the gaol of Castlebar; so loathsome, indeed, that even the hospital nurses feared to approach him, as he lay accursed with the *morbis pedicularis*. Left alone on his last night, he was found dead in his bed—the rats having gnawed into his vitals, it was said, even before life was extinct! George Robert FitzGerald's wife saw him dead; she then left Ireland, and, retiring to a convent in a Catholic country, found there—let us hope—that peace which she had failed to find in "the world." She had had no children; but her husband left one child, a daughter by his first

marriage, who went to reside, while yet very young, with her uncle Mr. Connolly, at Castletown, in the County of Kildare. She there received from Lady Louisa Connolly, his wife, all that fond attention that her peculiar position required. Years passed over, and she still knew nothing of her father's tragic end, until a sad chance revealed it to her. Blest with talents, youth, and beauty, her society was courted by the highest in the County of Kildare; amongst them there was one—it is again the old story—who passionately loved her, and whose love was returned. On an evening when he was expected at Castletown, and while she was yet awaiting his arrival, she almost unconsciously mounted the library ladder, and taking down a book that lay buried under a heap of papers, turned over its leaves. The name of George Robert FitzGerald caught her eye; she read there the story that had been concealed from her—the story of his crimes and of his end; read them with feelings who can pourtray? To her lover she told the secret that had been hidden from both, bade him farewell for ever, and never more entered into society. The bloom soon faded from her cheek, a rapid consumption set in, and she sank burdened with sorrow into an early grave.

The lawless acts for which the gentry of the Province of Connaught were remarkable in the last century were far from being brought to a close by the death of George Robert FitzGerald. In the same year a Mr. O'Connor, who assumed to be the descendant of the ancient line of the Connaught kings, took upon himself the state of prince, and, collecting a force of a thousand men, fortified himself in an island or oasis in the centre of a vast bog, and at once proceeded to dispossess many Cromwellian proprietors of their estates worth thousands of pounds a-year. He did many other acts in opposition to the laws, and in defiance of the local magistracy.¹

A.D. 1787.—On the 23rd of March, the Assizes commenced at Carrick-on-Shannon amid great excitement. On the 18th of October previous, George Nugent Reynolds was shot dead by Robert Keon—we have spoken above of both of them—and it was expected that the latter would be put on his trial for that act as wilful murder.

¹ "Irish Parliamentary Debates for 1786," Mr. Ogle's speech.

The Grand Jury, by their foreman, Thomas Tennison, found true bills against Keon and others, who, when brought to the bar, pleaded severally not guilty. The Clerk of the Crown then proceeded to call a jury; but a sufficient number of jurors not having answered to their names, the trial was postponed (*pro defectu Juratorum*) until the next assizes. Robert and Ambrose Keon were remanded, and all the other prisoners were admitted to bail.

The counsel for the Crown on that occasion were G. S. Williams, K.C., James Kirwan, John Geoghegan, of Bunnowen Castle, in the County of Galway, George J. Browne (author of the published report of the Keon trial), and George Moore, Esquires.

The counsel for the prisoners were Ulick Burke, John Blosset, Charles McCarthy, St. George Daly (afterwards one of the Justices of the Court of King's Bench), Edward Carleton, and Abraham Boyd. Of these Blosset was, perhaps, in the most extensive practice on the Circuit. No prisoner was satisfied who had not Counsellor Blosset for his advocate; his cross-examinations were worthy of a Sulpicius.

Owing to the excitement the above case caused in the County of Leitrim, the Attorney-General, the Right Honourable John FitzGibbon, applied on the 19th of May, 1787, for a *certiorari* to be directed to the Clerk of the Crown for that county, to remove thence to the city of Dublin the indictment for murder, and the Court granted the motion.

REX. v. ROBERT KEON AND OTHERS.

On the 19th of June a conditional order for a *Habeas Corpus* was granted to bring up to the Court of King's Bench the prisoners, Robert and Ambrose Keon, for trial at the bar of the Court, that is, to be tried by the full Court and, as the law then stood, by a jury of the County of Leitrim, summoned for that purpose to Dublin.¹

On the 23rd of June, 1787, counsel for the prisoners applied to the Court to discharge these orders, and to remand the record to the Clerk of the Crown of the County of Leitrim, which motion

¹ "Blackstone's Commentaries," Vol. iii., p. 352, Book iii., ch. 23.

was refused, and the case was set down for trial on the first day of the ensuing Michaelmas term.

On Friday, the 10th of November, accordingly, Robert and Ambrose Keon were brought to the bar of the Court, when John Peyton, Esq., High Sheriff of the County of Leitrim, handed the panel to the Clerk of the Crown, whereby it appeared that the names of 360 jurors were returned.

Counsel then rose to ask, on the part of the prisoners, for a postponement of the trial, on the grounds that a widespread prejudice prevailed against his unhappy client, Mr. Keon, who for thirteen months had been the most oppressed, traduced, and misrepresented man living. The minds of men were poisoned against Robert Keon, and this feeling was intensified by the fact that the Attorney-General had succeeded in changing the venue from the County of Leitrim to the Court of King's Bench in Dublin. Inflammatory ballads had been circulated through the County of Leitrim, wherein, the prisoner's name being Keon, he was compared to Cain who committed the first murder; and now on the night before this trial, the streets of the city of Dublin were disturbed by the singing of the same ballads, which are republished and scattered broad-cast and sung before the jurors, whose minds must be inflamed by such productions. He (counsel) would ask for a postponement until the next term, which would take place early in January, 1788. In the interval the excitement would have died away, and the public mind would have time to cool and subside into a temperate disposition and calm spirit of investigation and inquiry.

This application was refused; the Chief Justice observing that it might be difficult to bring up at another time so large a number of freeholders from the County of Leitrim.

The trial then commenced; Lord Earlsfort (afterwards Earl of Clonmel)¹ presiding, and the other judges being Mr. Justice Henn, Mr. Justice Bradstreet, and Mr. Justice Bennett.

Of these judges Lord Clonmel was the most distinguished lawyer and the best shot; he had argued more cases and fought more duels than any of the judges of the King's Bench.

¹ *Vide* a biographical sketch of this learned judge, by William J. FitzPatrick. ("Sham Squire," p. 32.) Mr. FitzPatrick's account of Lord Clonmel is said to be a photographic picture of his lordship and his times.

Mr. Justice Henn was an excellent private character, and full of fun and humour. On one occasion he assumed the appearance of being dreadfully puzzled on Circuit by two pertinacious young barristers, who flatly contradicted one the other as to the law of the case. At last they requested his lordship to decide the point.

"How, gentlemen," said the judge, wrinkling his brow in apparent thought, "can I settle between you? You, sir, positively say the law is one way, and you," turning to the opposite party, "as unequivocally affirm that it is the other way. I wish to God, Mr. Harris," turning to his registrar, who sat underneath, "I knew what the law *really* was."

"My lord," replied Harris, most sententiously, "if I possessed that knowledge, I would tell your lordship with a great deal of pleasure."

"Then we will save the point, Mr. Harris," exclaimed the judge.

The third judge, Sir Samuel Bradstreet, had been Recorder of Dublin and M.P. for several years before he was raised to the King's Bench.

Mr. Justice Bennett was for a number of years on the Connaught Circuit, but he does not appear to have been in extensive practice.

The jury sworn, the Clerk of the Crown read the indictment, and the prisoner was given in charge; but it was then nearly five o'clock in the evening; the whole day having been consumed with the arguments of counsel, with the challenging of the array, with demurring to the challenge, and with lengthened judgments from the Bench; and so the Court was adjourned.

On the morning of the following day, the Chief Justice and his brother justices took their places on the Bench, and Robert Keon was brought forward, and placed as a prisoner at the bar, where he was to abide his deliverance for good or evil, according to the issue of the trial.

The Crown Counsel (Mr. Duquerry) stated the case. The circumstances of this unhappy transaction, he said, were shortly these:—"The late Mr. George Nugent Reynolds thought, upon what grounds he (counsel) would not undertake to mention, that he had received some injury from Mr. Keon, for which he was entitled to

redress. Reynolds therefore sent a message to Mr. Keon to meet him, according to those rules of honour to which our laws give no sanction. The message was delivered by a Mr. Plunket, and it was agreed between him and Mr. Keon, and Mr. Keon's friend, that there should be a sham duel, and that the pistols should be charged with powder only. Singular as it may seem, it will be clearly proved that the two principals and their friends knew that no balls were to be brought to the field on the day of meeting. The only object of this meeting was to preserve the appearance of adhering to those maxims of honour which it was conceived on that occasion to be necessary to observe; but on the part of Mr. Reynolds, or of his friend who attended him, there was no idea of doing, or attempting to do, an injury to any person.

"On the faith of this agreement, Mr. Reynolds, attended by Mr. Plunket, came to the place appointed on the morning of the 16th of October, 1786, and alighting from his horse, advanced to Mr. Keon, who was on the ground before him, and who was attended by three or four other persons. Mr. Reynolds had in his hand a slight whip, and on coming up to Keon, he took off his hat, and said, 'Good morning.' Keon immediately replied, 'D——n you, you scoundrel, why did you bring me here?' and presenting a pistol which he held in his hand, close to his forehead, fired at Mr. Reynolds, and shot him through the head. The unfortunate man instantly fell and expired.

"These," continued the learned counsel, "are the singular circumstances of the case you have to try; and let me ask to what motive in the breast of the prisoner can we ascribe this deed? Is it to the heat of passion, which the law, in tenderness to human frailty, will sometimes allow as an extenuation? He had the whole of the preceding night to compose his mind. Fear for his own life there could be none; and he (counsel) lamented to be obliged to say to the jury that a deep and settled malice had urged him to take away the life of his fellow-man—that life which the God of heaven alone could bestow."

The first witness for the Crown was Mr. James Plunket. He swore that he called on the Keons on Sunday night, the 15th of October, 1786, and that he had been sent there by Mr. Reynolds; the Keons had all said that Reynolds had used them very ill, and

that he had written most insulting letters to their brother Robert, and that things had gone too far. One of the brothers, Mr. Edward Keon, appeared more inclined to settle than the rest; and the witness called him aside and begged of him not to load the pistols with ball the next day, the day upon which they, Robert Keon and Reynolds, were about to fight the duel. It was finally arranged that they were to meet next morning, and that the pistols were to be loaded with blank cartridge. They met accordingly, on the following morning, on the Hill of Sheemore, in the County of Leitrim; the Keons being first on the ground. Reynolds had no pistol, but Robert Keon had a pistol in his hand, and his two brothers were also armed. Witness observed much preparation, and felt astonished at the change that had taken place in their manner since the previous evening. He heard Mr. Reynolds say, "Good morning, Mr. Keon." Keon replied, using the words *rascal* or *scoundrel*, levelled his pistol at Reynolds, and shot him dead on the spot, without even waiting for the ground to be measured for the duel. He added that Keon had showed, while standing by the corpse of his antagonist, no contrition for what he had done.

This evidence was corroborated by another witness.

William Keon, the first witness examined for the defence, deposed that the mock duel was a pretence, that Reynolds told him that there must be a duel, and that the parties went to the ground with the full determination of fighting. That Reynolds carried in his hand a horsewhip, and made three successive blows at Keon, and that the third and last of the blows struck the pistol which he (Keon) held in his hand, and that it then accidentally went off and shot Reynolds in the head. Other witnesses were examined with the view of proving the case made by William Keon.

Lord Clonmel then proceeded to address the jury, and he did so briefly and distinctly. He said that, on an occasion like this, he had but few observations to make. There could be no doubt that Reynolds was killed; there could be no doubt that he fell by a shot fired from a pistol held by the prisoner at the bar, and there could be no doubt that this meeting was in consequence of a deliberate appointment.

He then commented on the difference between the testimony of Mr. Plunket and Mr. William Keon. If the jury believed the former, then there was to be no real duel but a mock one; while, on the contrary, Keon seems to say that his purpose was to bring about a duel. But Plunket swore directly the opposite. As to the agreement that the pistols were not to be loaded with ball, if that were true, then that Keon should have had his pistol so loaded was a work of shocking baseness. If they believed that several blows were struck by Reynolds at the prisoner, that one of these blows struck the pistol, and that it went off by accident, then they must acquit the prisoner. It was for the jury, however, to say whether or not it was probable that Reynolds, himself unarmed, would make three blows at a man who was, and whose two brothers were, armed with pistols. This was all a matter of probability, and the jury were the judges of probability. If the jury believed that there was this agreement between the parties to which Plunket had sworn, then Robert Keon became the assassin of the deceased, and the unfortunate man was murdered—cruelly and barbarously murdered. The Chief Justice (he had himself fought Lord Tyrawley) told the jury that it was his opinion “that if one in a deliberate manner goes to fight a duel, and he kills his opponent, it is murder.” The defence, he said, got up was a good one if the jury believed it; but when the prisoner stood over the corpse, after the deceased fell, did he show any mark of remorse? With these observations he would leave the case in the hands of the jury, upon whose counsels he implored the light of heaven to descend.

Mr. Justice Henn, Mr. Justice Bradstreet, and Mr. Justice Bennett followed.

The jury having heard these several addresses, retired to their room, and it was an hour ere they returned. The court was hushed into profound and awful silence, as the question was asked, “Gentlemen, have you agreed to your verdict?” The foreman replied that they had, and that the verdict was “Guilty.”

Lord Clonmel, C.J., thus addressing the prisoner, said:—
“Prisoner at the bar, it becomes my duty, and a painful duty it is, to state some of the circumstances of the black crime of which you have been found guilty by a jury of your own county, and, in truth,

as respectable a jury as any other county could produce. You have been found guilty of murder—the most horrible offence that is to be found in the catalogue of human crimes—and in this case attended with circumstances of aggravation. You are an attorney, an officer of the Court, who, from your age and your situation, must have been aware of the consequences of your act.

“It seems that the unhappy victim of your resentment had used some aspersive language with respect to you, and you took the most summary and most violent method of satisfying your own anger and of vindicating your feelings of honour. You, an attorney, sought the most public place, the county town, Carrick-on-Shannon, during the sitting of the judges, publicly to beat him. One would think that human wrath could go no farther! One would have thought that the person who tamely received such an insult could have excited no other passion but pity!

“To satisfy the world, to satisfy the false appearances of honour, Mr. Reynolds sent a mutual friend to you, who apprised you that you might appear as an adversary without any fear of danger to yourself, for that Mr. Reynolds would have no weapons to do you mischief. After such a proposal you went—the next day—after having laid your head upon your pillow—after having, we may suppose, addressed the Almighty in prayer—you rushed in the most brutal manner on the object of your rage, and deprived him of his life; nor even then satisfied, while his lifeless body lay bleeding at your feet, you continued to express your unmeasured resentment. See, too, what you have done; you have brought down your own family and his to the most wretched situation, and all by the indulgence of your uncontrolled passions. You have been defended by able men, and everything that human ingenuity and learning could do to save you has been done by them. Nothing now remains for me but to pass upon you the sentence of the law.”

Accordingly, on the morning of the 16th of February following, Robert Keon was launched into eternity.

Reynolds left a son, George Nugent Reynolds, who, it is said, was blest with poetic talents of no ordinary degree. He wrote many poems, and to him has been—with what justice we know not—attributed the authorship of the “Exile of Erin.” Affidavits

upon affidavits have been made to support the truth of this position, but the great majority believe that Campbell was the author.

Amongst the lawyers who rode the Connaught Circuit in the second half of the last century, one of the most remarkable was Thomas Kelly, of Fidane, in the County of Galway. His name, "T. Kelly, Counsellor-at-Law," appears in 1764 on the list of the Common Council of the Town of Galway.¹ As a real property lawyer, he was unequalled at the Irish bar. No litigant on circuit was satisfied who had not Tom Kelly for his advocate. No proprietor was content who had not his opinion on his title. All purchasers of property must have Counsellor Kelly's sanction for their speculations. In a word, he became an oracle on circuit. He was always prepared, and his arguments never failed in support of his opinion. In 1782 he was raised to the dignity of Prime Sergeant, and on the death of Mr. Justice Lill, in 1784, was appointed a Justice of the Court of Common Pleas. His aversion to litigation was well known; and it was his wont to state what course the litigant parties should pursue, and if both parties agreed in laying a case before him, ten to one if either ever seceded from his opinion. His second marriage, when late in life, is thus announced in Walker's "*Hibernian Magazine*," July, 1795, page 96:—"At Rosanna, County of Wicklow, the Right Hon. Thomas Kelly, Second Justice of His Majesty's Court of Common Pleas, to Miss Tighe." As a judge, he was willing to admit his mistakes; thus William Johnson (afterwards judge) was once pressing him fiercely to a decision in his favour, relying on two cases in point, which had been decided by his lordship. "Oh, Mr. Johnson," exclaimed the judge, "is it because I decided wrong twice that you would have me to do it a third time? I'll decide the other way this bout;" and he did so. In 1801 he retired from the Bench, which he left with a pension of £2,000 a-year. Thenceforward he lived as a country gentleman in hospitable magnificence at his residence in the Queen's County. He was a good rider, and followed the hounds almost to the day of his death. He died, to the unanimous regret of all who knew him.²

The appointment of assistant barristers in 1787 to assist the

¹ Hardiman's "*History of Galway*," p. 187, note.

² Barrington's "*Personal Sketches*."

Justices of the Peace at the Quarter Sessions, provided situations for several of the bar attached to this Circuit. Previous to that time there had been no such office ; and it was felt by the magistrates to be an intolerable burden and responsibility for men like them, without legal training, to have quarterly to charge Grand and Petty Juries, whilst the services of a barrister skilled in the law could be obtained at a moderate cost to the State. Lord Lifford, then Lord Chancellor, approved of the project ; and an Act was passed (27th George III., chap. 40) which enabled the Lord Lieutenant to appoint barristers to each county or each riding of counties as in the Act mentioned. At that time there were no civil bills triable at Sessions, and the assistant barrister's jurisdiction was entirely conversant with criminal cases. The new offices, though the pay was merely £300 a-year, were eagerly sought for by the leaders of the Circuit. The place promised well, for the society of the assistant barrister was sure to be sought for by the country gentlemen, at whose houses they would usually stop, and an increase of business consequent thereon was to the bar a certainty. In this way the new posts were filled, and the Connaught lawyers had their share of the patronage.

A.D. 1790.—The accounts of the several assizes in this year betoken a diminution of crime. In Sligo and in Mayo the High Sheriffs had the pleasure of presenting the judges and the bar with white gloves—an expensive pleasure, no doubt ; but it would be a pain equally expensive to make, as they should have done, a like number of presents of black gloves in cases of execution. In fact, it mattered little to the Sheriff, in a pecuniary way, whether he had to rejoice or to mourn, as, in either case he had, according to the custom of the times, to pay. But whether the bar rejoiced at a maiden assizes, when there was no business for them to do, is a speculative question upon which we offer no opinion ! On their arrival in Galway, they were met by a young and clever barrister, Mr. (afterwards Sir Jonah) Barrington, who, we may presume, honoured them with his company each day of the Assizes. Flushed with victory, he had been just returned to Parliament as member for the neighbouring borough of Tuam ; and we may hazard a plausible guess that a gentleman of such volubility was not wanting in responding to a neatly put together speech of the junior

proposing his health. In the year 1791 the salary of the assistant barristers was increased to £480.

In 1793 the exclusion of Roman Catholics from the bar (from which they had been excluded since 1725) came to an end, and in the same year Messrs. Martin French Lynch, of the Renmore family, and Mr. Donelan, of Ballydonelan, both Catholics, were called to the bar, and were admitted without a black bean on the Connaught Circuit. Thus, while the Church of Rome in England and in Ireland was peacefully recovering her freedom, in a neighbouring Catholic country the rivers flowed into the sea red with the blood of the Catholic clergy ! It seems to require explanation, how, in the very year when the Act was passed enabling Catholics to be called to the bar, they actually were "called," for one would suppose that a number of years was necessary for their education. But the solution of the difficulty is simple. Catholics, ever since their exclusion, had entered the Inns, and pursued their studies, and had "eaten their dinners" with an appetite equal to that of their Protestant fellow-students, and thus were qualified, though "uncalled," to obtain certificates of competency to act as conveyancers. So they became conveyancers and pleaders, and many of them realized large fortunes ; though, as in the case of *Simpson v. Mountmorris*, the legality of the work done was sometimes called in question, on the ground that the conveyancer was "a Papist." Consequently, when the enabling statute passed, there was an instant accession of able and eminent men to the legal roll in each kingdom. Need we remind our readers that Charles Butler, the "Catholic conveyancer" and commentator upon Coke Littleton, realized an enormous fortune ? He was a member of one of the Inns of Court, but he was not a barrister. Though thus admitted in 1793, they were still excluded for the next thirty-six years from the Bench and from Parliamentary honours. The exclusion of lawyers, both Catholic and Protestant, from Parliament has too frequently been desired by many who are ignorant of how great would be the calamity caused by such an exclusion. Lawyers were, as a matter of fact, excluded in the reign of Henry VI., early in the fifteenth century, by Cardinal Beaufort, who, though no lawyer, was Lord Chancellor of England ; and that most reverend personage, to whom the bar was odious, caused to be inserted in the writs for a

new Parliament a clause directing that no barrister should be elected; so there was not a single member of the profession in that Parliament, which has ever since been known by the name of the "Parliamentum Indoctum"—the Ignorant Parliament—by which not a single good law was passed, nor a well-worded section penned. Never afterwards excluded, the members of the bar have since taken their seats side by side with the untitled aristocracy in the Lower House; whilst the Lord Chancellor, in the House of Lords, is as much respected, to use the words of the low-born Lord Thurlow, as the "proudest peer he looks down upon!"

A remarkable occurrence took place at the Roscommon Assizes in the year 1793. It appears that William Crofton, Esq., was High Sheriff of the County of Roscommon, and he distinctly declined to take that oath which affirmed that the Church of Rome was idolatrous and damnable, nor would he take any oaths which would fix a stigma on his Catholic fellow-countrymen. The judges for the Circuit at the Summer Assizes were Chief Baron Yelverton and Mr. Justice Downes, afterwards Lord Kilwarden. On Monday, the 22nd of June, the Grand Jury were summoned in the usual course by the sheriff; but the legality of their constitution was at once called in question by the counsel for the several prisoners. The assizes were then postponed until the 12th of October following, when they were opened by the Chief Baron and the Prime Sergeant FitzGerald. After the new grand panel had been called over, the counsel for the prisoners tendered the following challenge to the array: '—"That W. Crofton, who empannelled and returned the same, was not qualified to act as sheriff of this county, as he had not performed the requisites by the statute of the 2nd of Queen Anne required of all officers on their several appointments and admission into office. Wherefore it prayed that the array might be quashed." The above statute enacts that all officers who do not qualify for their office according to the modes specified therein are incapable of acting in or of holding same, and the office is thereby declared vacant.

This challenge having been received, the Crown lawyers demurred thereto *ore tenus*; but after a long argument the Court

disallowed the objections, and thenceforward many sheriffs all over Ireland declined to take the offensive oaths.

The criminal business then commenced, and, in truth, there was little in the calendar to call for a passing remark; but owing to what occurred in the jury-room, and before the discharge of the jury, we have no hesitation in placing before our readers the case of *The King v. McDiarmad*, not that there is a single element in the case worth noting, save as to the carting of the juries to the verge of the county, then common as a punishment for disagreeing.

McDiarmad was indicted for having, on the 21st of May, feloniously, with several persons unknown, broken open the house of Thomas Tenneson, Esq., and thereout stole several articles of plate, wine, &c., &c. To this he pleaded not guilty. Be it remembered that if the value of the property then stolen exceeded a certain small sum, the penalty was death. The following gentlemen were professionally engaged: Sergeant Stanley, the Solicitor-General, Mr. Toler, John Blosset, and James Whitestone, for the prosecution; while the counsel for the prisoner were John Geoghegan and Owen McDermott, Esqrs.

The indictment was opened by the junior counsel for the prosecution, and the Sergeant stated the case, we are told, with great ability and ingenuity. Several witnesses were examined on both sides, and a very able and discriminating charge was delivered by the Chief Baron. The jury retired about 10 p.m., but as it was not probable that they would agree, the Court was adjourned until the following morning, when they reassembled; and as an agreement was still unlikely, they were informed by the Court that carts would be ready at three o'clock to cart them to the bounds of the county, fifteen miles off, there to be discharged. Such was the punishment usually inflicted in those days upon disagreeing juries. Now, the weather was cold and cheerless, and the majority were determined to enforce their arguments upon the minority in some way likely to ensure their coming to an unanimous decision. The foreman, accordingly, insisted that those differing from him, four in number, should give way, and find the prisoner guilty. They, with equal determination, resisted all persuasion. A hand-to-hand fight ensued. Fortunately, the only fire-arms in the room were the fire-irons, but even those were too freely used. The uproar

reached the ears of the judge; the halberdmen rushed upstairs, broke open the door, and, with the aid of the military, succeeded in dragging the jurors, all battered and bleeding, into Court. Each party swore that "they'd have the other's lives." His lordship then administered a severe lecture to them, and they were led down to the carts, three in number, which were ready to receive them. On they moved, attended by the sub-sheriff, on horseback, and by a troop of the 14th Light Dragoons. As the jury were leaving the town, those that had been for acquitting the prisoner consented to find him guilty of stealing property to the value of 4s. 9d., to which the others assented. The compromise, however, came too late, as the judge had left town, and so they must travel on for hours before those awkward vehicles could reach him; for the rugged roads, up hill and down dale, were then almost impassable to wheel-carriages—and such carriages! The wheels, revolving on wooden axles, which were never oiled, made a detestable half-screaming and half-whistling sound, as they rolled along into ruts and out of them as best they could! We cannot say that either in their jury-room or in their equipage we envy these twelve men!

The following is the Connaught Circuit list for the Summer Assizes of 1795:—Roscommon, 20th July; Carrick, 27th July; Sligo, 30th July; Castlebar, 4th August; Galway, 7th August; Ennis, 15th August. This was the last year in which Ennis belonged to the Connaught Circuit. In the next year six circuits of the judges were for the first time established in place of the five which had previously existed, the new and additional one being "the Home." Ennis was then attached to the Munster Circuit, and a general recasting of the other circuits took place. But another and a greater revolution took place in 1796, which was the clothing of the assistant barristers with power to hear Civil Bills for sums of small amount, and a withdrawal from the Judges of Assize of all Civil Bill jurisdiction, save on appeal.

The history of Civil Bills is not without interest. Previous to the reign of Queen Anne they had been unauthorized by the law of the land, though they were established by Lord Strafford, and the sixth article of his impeachment was grounded on the establishment of such an illegally constituted Court. In their incipency, Civil

Bills were known as "English Bills," to distinguish them from the pleadings in the Superior Courts of Common Law, which were in Latin; and the reason for their being called "Civil Bills" was due to their similarity to bills in the "Civil Law," as the "Code, the Pandects, and the Institutes" of Justinian are called. The statute of 2nd of Anne, cap. 18, A.D. 1704, followed by the 6th of Anne, cap. 5, which was made permanent by statute 2 Geo. I., cap. 11, A.D. 1714, must be considered as the earliest of the Civil Bill code, and the foundation of the present system of bringing the law home to every man's door. This last-mentioned Act empowered the Judges of Assize, in their respective circuits, to hear and determine in a summary way by an "English Bill," or paper petition in the English language, all manner of disputes or differences between party and party, for any sum not exceeding that in the Act set forth.¹ This mode of trying causes of small amount before the Judges of Assize on their several circuits continued with but little alteration from 1714 to 1796, when the statute 36 Geo. III., chapter 25, was enacted, which entirely withdrew from the Judges of Assize the hearing of all Civil Bills. In truth it was high time, for the business of the Courts of Assize and Nisi Prius had increased with the increase of property and population, and the suits by Civil Bill had so far multiplied that in many counties the Civil Bills constituted the chief part of the business of the Judges in the Nisi Prius Court. It was therefore not unusual to require the assistance of a third judge to get through the business of an Assizes. The appeals under that system were vexatious, for an appeal lay to the next going Judge of Assize; and thus the whole county was assembled twice a-year to witness the accumulation of arrears of business to an extent that at last required the interference of the legislature.

The appointment of assistant barristers at Quarter Sessions had proved so satisfactory in Crown cases that it was now resolved to give them power to entertain Civil Bills; and it must be admitted that it was due to the genius of Lord Cläre, then Lord Chancellor of Ireland, that so beneficent a measure became law. The preamble of the Act is worthy of remembrance; it states "That whereas the great increase of Civil Bills, and also the great increase of other business at the assizes of the several counties of this king-

¹ For a Form of Civil Bill in 1748, *vide supra*, *Index*, in the case of *Martin v. Eyre*.

dom, have made it highly inconvenient that such Civil Bills should be heard and determined at the assizes; and whereas it will contribute to *the ease of the poor* (whose cases are principally tried by Civil Bill, and who are now brought frequently far from their homes, and often unavoidably kept many days attending the assizes, as parties and witnesses, and sometimes at an expense exceeding the value of the sum in contest) if there should be more frequent opportunities of hearing and determining within the several counties of the kingdom, and more places appointed for hearing and determining the same."

The inestimable benefit to suitors of understanding the language of the process of the Court, now patent to all men, was long opposed by the bar. French had been the language of the law until the reign of Henry VIII. Bracton and Littleton had written in that tongue, in which, too, the reports known as "The Year Books," had appeared. From Henry VIII. to the Commonwealth, Latin was the language of the law. But during the eleven years of the Commonwealth, English, the tongue of the people, was used. The Restoration of Charles II. in 1660 brought with it a reaction in favour not only of the Latin, but even of the Law-French, to the entire exclusion of the English tongue. During the reigns of Charles II., James II., William III., Anne, and George I., Latin was the legal language; but by the 4th George II., 1731, chap. 26, Latin was abolished as the language of the law, and from that time English has been used in all the pleadings of the Courts. The Civil Bills, during the time of Lord Strafford (who was Viceroy from 1635 to 1643), were in English, as they have been from their re-establishment in the early years of the last century to the present time. The subdivision of the counties into districts for the new assistant barristers was a great boon to the poor suitors.¹

¹ The following are the names of the assistant barristers, chairmen, or County Court Judges, in the five Connaught counties from 1796 to the present time. Those marked with an asterisk were members of the Connaught Bar Society.

Co. GALWAY.

D. 1797. Ulick Burke, K.C.*

D. 1798. James Kirwan* (of the Castle Hacket family, interred in the Abbey of Ross).

A.D. 1822. James Trail Hall, Commissioner of Bankruptcy.

A.D. 1829. Stephen Woulfe, K.C., afterwards Lord Chief Baron.

A.D. 1830. William Henry Curran.

JOHN KIRWAN.

A.D. 1797.—Descended from the Kirwans of Dalgan Park, in the County of Mayo, John Kirwan was a man of talent above the average, and of social qualities that endeared him to those with whom he was associated—qualities of head and heart that made him one of the most popular men on the Circuit, and won for him the

A.D. 1834. William Mayne.
 A.D. 1836. William Deane Freeman,
 K.C.
 A.D. 1852. Hans H. Hamilton, q.c.
 A.D. 1854. William W. Brereton, q.c.
 A.D. 1867. Robert Longfield, q.c.
 A.D. 1868. Thomas Rice Henn, q.c.,
 who is also 41st Recorder of Galway.

COUNTY MAYO.

A.D. 1797. Martin Kirwan.*
 A.D. 1808. John Darcy,* of the Clif-
 den family.
 A.D. 1809. W. H. Ellis,* many years
 Crown Prosecutor on the Con-
 naught Circuit.
 A.D. 1829. Robert Johnson.*
 A.D. 1834. Malachy Fallon.*
 A.D. 1835. W. Mayne.
 A.D. 1847. Michael O'Shaughnessy,
 q.c.
 A.D. 1859. Sir Colman O'Loughlen,
 q.c., afterwards Judge Advocate-
 General.
 A.D. 1861. Charles Rolleston, q.c.
 A.D. 1865. John H. Richards.

COUNTY ROSCOMMON.

A.D. 1797. James Whitstone, K.C.,*
 Father of the Connaught Bar.
 A.D. 1802. Richard T. Sharkey.*
 A.D. 1804. George French, q.c.,* for
 many years Father of the Con-
 naught Circuit.
 A.D. 1829. Thomas A. Forde.

A.D. 1849. Henry Hutton.
 A.D. 1859. James Robinson, q.c.*
 (now First Sergeant-at-Law).
 A.D. 1863. Sir Francis Wm. Brady,
 Bart., q.c.
 A.D. 1872. Arthur Hamill, q.c.

COUNTY SLIGO.

A.D. 1797. Daniel W. Webber.
 A.D. 1803. Francis Knox, K.C.
 A.D. 1809. Robert Johnson.*
 A.D. 1830. W. H. Ellis.*
 A.D. 1836. H. Robinson.
 A.D. 1865. James P. Hamilton, q.c.
 A.D. 1880. Arthur Hamill, q.c.

COUNTY LEITRIM.

A.D. 1797. Thomas Morgan Crofton.*
 A.D. 1802. Thomas Fleming.
 A.D. 1817. John Dickson.
 A.D. 1822. Theophilus Jones.
 A.D. 1829. William Henry Curran.
 A.D. 1830. Richard Moore.
 A.D. 1831. John Finlay.
 A.D. 1837. Daniel Ryan Kane, q.c.
 A.D. 1862. Henry West, q.c.*
 A.D. 1864. Charles James Coffey, q.c.
 A.D. 1866. Charles Hare Hemphill,
 q.c. (now Sergeant).
 A.D. 1870. John O'Hagan, q.c. (now
 one of the Judges of the High Court
 of Justice).
 A.D. 1872. John C. Neligan, q.c.
 A.D. 1878. William T. Darley, LL.D.
 A.D. 1879. Samuel M. Greer.
 A.D. 1881. George Waters, q.c.

hand and the heart of an heiress, a Miss French, of French Grove, and with the Grove a house, which contained divers reception-rooms, barrack-rooms, bed-rooms, kitchen, and larder, situate at a convenient distance from Castlebar, and on the line of march that the Connaught bar marched on their road to Galway. She was accomplished—so was he; and it was not unusual, according to the custom of the day, for her to be mounted on a gorgeous pillion behind her husband, as he headed the cavalcade, generally a dozen of the bar, whom he invited to meet the judges. Mr. Kirwan, living in the city of Dublin during the greater part of the year, had his lands let to tenants; consequently he was not in a position to have either the fatted calf selected from the herd, or the sheep from the fold; neither was his garden well stocked, though his wine cellar was; in fact, he was dependent upon the market of the neighbouring town of Tuam for the necessaries and for the dainties of the table. Now, on the day in question—we forget the year—the judges, His Majesty's counsel, and the leading men of the county of Mayo, were gathered within the hospitable walls of French Grove; four o'clock came, five o'clock, and six, and no market cart appeared, and no provisions were in the larder; no smoke from the kitchen chimney, and no sign of dinner. Dismay was on every countenance, and it was at last resolved to push on to Tuam, and who knows but the Archbishop would invite them all to a sumptuous entertainment at the Palace? The suggestion was adopted; they dashed on; but when drawing near to the town, they met the market cart, loaded with all manner of viands. Round turned the cavalcade, the apology of the major-domo, who had evidently been celebrating his birthday, was accepted, and at midnight the company felt happy, and were soon in a position to forget the disappointments of the afternoon. It is worthy of remembrance that the grand-nephew of this grand old lawyer is the present County Court Judge, of the County of Clare, Mr. Charles Kelly, Q.C., of the Connaught Circuit, whose picturesque and lovely demesne, Newtown, near Ballyglunin, abuts on the line of march of the bar between Castlebar and Galway. Mr. Kirwan ceased to be a member of the Circuit in 1825; but he appears to have been frequently the guest of the Connaught Bar Society.

A.D. 1798.—The *Freeman's Journal*, at the close of the month

of April, 1798, publishes the following gratifying intelligence from the Cork correspondent of that journal, which, at the time, was edited by Mr. George J. Browne, a member of the Connaught Bar Society, in relation to Sergeant Stanley, a leader on the Connaught Circuit. It would appear that the learned sergeant was required by the Lord Chancellor to take the place of one of the judges on the Munster Circuit, upon which there were several heavy cases for trial, including murder, treason, houghing of cattle, &c. The Assizes having terminated, the High Sheriff of the County of Cork presented him with the following address :—

“ COUNTY COURT GRAND JURY ROOM,
“ *April 21st, 1798.*

“ To EDMUND STANLEY, Esq., Third Sergeant-at-Law.

“ We, the High Sheriff of the County of Cork, at the Spring Assizes assembled, return our warmest thanks to Mr. Sergeant Stanley for the firm, patient, and humane conduct evinced by him during the long and painful execution of his office as judge, and the dignity with which he supported order and decorum in his Court.

“ SAMUEL TOWNSEND,
“ For self and fellows.”

The Sergeant replied—“ Mr. High Sheriff and Gentlemen of the Grand Jury of the County of Cork, I am extremely happy to find that my conduct in discharge of my public duty, upon this very important occasion, has met with the approbation of so respectable a body as the High Sheriff and Grand Jury of the County of Cork; and if I wanted anything to animate my exertions in support of the laws and constitution, and in restoration of public tranquillity, this kind of testimony, which you have been so good as to bestow upon me, would afford me a very strong additional incentive indeed.”

As Crown Judge in Cork, much of the learned Sergeant's time had been consumed in hearing cases arising out of the unhappy state of political parties in the year of “the rebellion.” There was one trial, however, and that for wilful murder, which awakened

every sympathy of the human heart in favour of the prisoner at the bar, a Roscommon gentleman, whose special counsel had ridden from the Connaught Circuit for the occasion. We shall summarize it as follows :—

REX *v.* THE HON. ROBERT EDWARD KING.

The Crown Counsel of the Munster Circuit appeared for the Crown, whilst for the prisoner were several members of the Munster bar—Messrs. Blossett and Martin Lynch being special from the Connaught Circuit. The family of King had obtained a grant, in the confiscations of the sixteenth century, of the Rockingham estates in the County of Roscommon, of which Lord Kingston was in 1752 proprietor, in which year he married Jane, daughter of Thomas Caufield, of Dunamon. In 1766 he was created Viscount Kingsborough, and in 1768 Earl of Kingston, from which last-mentioned year, and during his life, his eldest son and heir, Robert, bore by courtesy the title of Lord Kingsborough; and he in 1769 intermarried, whilst yet a minor, with Caroline FitzGerald, a daughter of Richard FitzGerald, of Mount Ophaly, in the County of Kildare. She had one brother, who died unmarried, and on his death she became heiress and representative of the White Knights. Though unmarried, he left a son whose name was Henry Gerald FitzGerald, illegitimate, and Lady Kingsborough, being deeply attached to her brother, resolved to bring up the young lad with as much care as if he had been her own son. He lived in her house at Kingston Lodge, near Boyle, and was the constant companion of her children, the eldest of whom was George, afterwards third Earl of Kingston, and the second, Robert Edward, the prisoner at the bar, afterwards Lord Lorton. There were daughters, too, and one of them was the Honourable Mary King; and it was for the better education of those children that Lord and Lady Kingsborough spent the greatest part of the year in the neighbourhood of London. The Honourable Mary King had a pleasing expression of countenance, her figure was graceful, her manners were artless, and she was remarkable for the beauty of her hair, which grew so luxuriantly as to attract the notice of all who saw her. She had conversational powers of no ordinary kind, and could entertain by her ceaseless and varied anecdotes the many who crowded to her father's receptions near London.

FitzGerald obtained, through the combined influence of the Earl of Kingston and Lord Kingsborough, a commission in the army, and soon rose to the rank of colonel. In London he continued to enjoy, as he had done in the County of Roscommon, the unaltered friendship of those to whom he owed his position in society. And yet, forgetting all that they had done for him, he, after long persuasions, induced the Hon. Mary King to leave her father's house and elope with him, though he was then a married man. On the morning of her disappearance (she was then but eighteen), a note left on her dressing-table informed her parents that she had fled from her home with the intention of drowning herself in the Thames. No time was lost in dragging the river near the house, and, as her bonnet and shawl were found on the bank, the family in general was convinced that she had committed suicide. Lord Kingsborough could see no grounds for such an act, and he accordingly caused advertisements to be published in all the London journals of the day. With matchless effrontery, Colonel FitzGerald affected to join in the search, and when all had proved fruitless, no one was louder in lamentation than himself, but he had "his misgivings that she was yet on the land of the living." He was admitted to their councils, proposed plans, sympathised with them in their regrets, and acted the part of a loving relation admirably. One day the darkness which shrouded the disappearance of the young lady in mystery was dispelled, and in this way. It was the custom of Colonel FitzGerald to call about noon upon his daily mission of condolence; it now so happened that one day a girl of the lower class of life waited on Lady Kingsborough, with an intimation that she thought she could give her some information that would lead to the discovery of her missing child. She was, she said, a servant at a lodging-house in Kensington, to which place a gentleman had brought a young lady about the time mentioned in the advertisements, and this gentleman was a constant visitor at the house.

Whilst the girl was thus speaking, the door was flung open, and in walked Colonel FitzGerald. She recognised him at once, and said, "Why, that is the very gentleman that visits the young lady." So completely was the colonel taken by surprise that, without uttering a syllable, he dashed down-stairs, and in a moment regained the street.

The game of deception was now up, and the prisoner, Colonel King, at once sent him a hostile message, and on the following morning they met near the magazine in Hyde Park. Seven shots were exchanged before they separated, nor would they have been then separated, had not Colonel FitzGerald's ammunition been exhausted. He then made an effort to address Colonel King, who cut him short by saying, "You are a d——d villain; I won't hear a word you have to say!"

On the following day the parties were again to meet, and in the same place, but, before the appointed time, both were put under arrest by the police. The young lady was now recovered by her father, and conveyed first to Kingston Lodge, in Roscommon, and next to Mitchelstown Castle, in the south of Ireland, far, as it was supposed, from the influence of Colonel FitzGerald. But his plans were already laid. He had bribed one of the maid-servants who accompanied her to Ireland, and through her got the most accurate information concerning the young lady. Disguising himself as best he could, he came over to Ireland, and put up at the hotel in Mitchelstown, for the sole purpose of again carrying off his victim. Information was at once furnished to Lord Kingsborough of the stranger's presence and of the danger his daughter was in. The stranger had left that morning for Kilworth. Lord Kingsborough and Colonel King followed him, and they arrived just as he had retired to his room for the night. Lord Kingsborough sent the waiter to him to say that two gentlemen wished to see him most particularly. The door was locked, and the stranger answered in loud tones from within that he was not to be disturbed. The moment that Lord Kingsborough and Colonel King heard the well-known voice of Colonel FitzGerald they smashed open the door. The prisoner rushed at him as he lay in bed. The villain begged for mercy, but his cries of agony were stifled in his blood. They left him a mangled corpse. Colonel King was immediately arrested, and at the ensuing assizes of the County Cork, tried before Sergeant Stanley, and acquitted of the charge of wilful murder. The Earl of Kingston was tried at the bar of the Irish House of Lords, and was also acquitted.

CHAPTER VII.



THE Connaught Circuit during the eventful year 1798 is marvellously free from all trials of interest. Not a single criminal appears to have been brought before the courts either for high treason or for murder, for houghing cattle, or for any lesser crime. But we must not therefore infer that there was an immunity from crime, or that justice had grown weary; the hangman's occupation, indeed, was gone; it was for him then to enjoy his *otium cum dignitate*; but courts-martial sat daily at the drum-head, and by their sentence multitudes perished. The "Saunders's News-Letter" of the 12th of August in that year states that "great numbers of criminals were tried by court-martial in Galway, some for being engaged in the late rebellion, and others for houghing cattle. Some were acquitted, but far the greater number were executed." The condemned in the County of Galway were generally shot, while those in the northern counties of the province were for the most part put an end to by the more ignominious death of hanging. The commanding officer in Galway, Colonel of the Kilkenny Militia, ordered the prisoners out to be shot in batches of ten. One of his officers, a Captain Rawson, of Baltinglass, refused to be a party to this wholesale slaughter, and when his colonel ordered him to take a file of soldiers to the green for the above purpose, he refused, and immediately resigned his commission. On his resignation being accepted, he flew at his colonel, and gave him before his brother officers an unmerciful flogging at the door of the Tholsol, in the town of Galway. The colonel sent a challenge, which the captain did not accept. The latter was then just about to be married to a County Galway lady; but calling on the morning of the intended marriage, dressed as a bridegroom, at the lady's house, he found that she declined to marry one upon whose honour, on account of the above refusal, there rested a stain; and

so he rushed to the barracks, and, returning in a couple of hours, claimed and received his bride, as he had in the meantime shot his colonel and vindicated his own good name. How vividly does this anecdote pourtray the ideas of that time! How difficult is it to realize that in little more than three-quarters of a century so great a change could have taken place in the feelings of society!

The usual meeting of the Connaught bar took place after the Hilary Term of 1798, but there was no meeting after Trinity Term, as appears by the following minute made by the secretary, Mr. John Guthrie, in the Bar-book:—

“Trinity Term, 1798.—The Connaught bar did not meet after this term on account of the rebellion in Ireland.”

The defeat of the insurgents at Vinegar Hill, on the 21st of June, crushed the rebellion for a time; but on the 23rd of August, the whole country was again in confusion, in consequence of the landing of a small French force of 1,060 men, besides officers, at Killala, in the County of Mayo. On the 25th of August, the French, under General Humbert, took possession of Ballina, and on the 26th routed the English forces at Castlebar. On the 8th of September, however, they were surrounded at Ballinamuck, in the County of Longford, by an army of 20,000 men, assembled under the command of Lord Cornwallis. These are matters of history with which our readers are familiar. Need we, then, enlarge upon them further than to say that the Summer Assizes in consequence were postponed until late in September? On Saturday, the 15th of that month, the Judges, Chief Baron Yelverton and Baron Metge, opened the Commission in Roscommon. The bar appeared all in military costume, as they had done during the two preceding Terms in the Courts of Law and Equity in Dublin. It was universally conceded then that the lawyers' corps were the most efficient of the volunteer regiments during those disturbed and dismal times. Their uniform was a scarlet coat, turned up with blue facings, yellow waistcoat, red stripe down the breeches, long boots, and a cocked hat. The bar, indeed, were not deficient in courage; and though perhaps none of them had ever fought in line, yet many had faced death in the duelling field. None of the Irish judges, it must be admitted, won laurels, as some of their

English brethren had done in the navy and in the army. Everyone knows that Lord Erskine was a midshipman on board the "Tartar" in 1768, and, failing to rise in the navy, entered the sister service, from which he retired after having obtained a lieutenancy in 1773. Need we remind our readers that Lord Chelmsford (Frederick Thesiger), who died in 1873, fought as a midshipman on board the "Cambrian" at the second bombardment of Copenhagen, and that, having, both as an advocate and a wit, rivalled Thomas Erskine's splendid renown, he too, like Erskine, won the seals?

The military aspect of the judges and the bar on Circuit may have been amusing from its novelty, but what business they transacted we have been unable to learn. Much it could not have been; much certainly was not anticipated, since it appears, from the list published shortly previous to the Circuit, that three days only (exclusive of Sundays and travelling days) were at the most allowed to any of the towns. On Wednesday, the 19th of September, 1798, "the counsellors assembled on horseback before the judges' lodgings in Roscommon. The Chief Baron mounted his horse at eleven o'clock, but Baron Metge, like an old woman, got into his carriage, and, much to the amusement of the bar, drove the whole way to Carrick-on-Shannon, while his servants led his horse in case his lordship should wish to ride; a troop of heavy dragoons accompanied them along the road; and the bar, as well as their servants, were armed with pistols in their holsters, blunderbusses slung across their backs, and two-edged swords by their sides."¹

On Thursday, the 20th September, the Assizes were opened at Carrick-on-Shannon, and closed on Saturday night. On Monday, the 24th, the judges and bar proceeded to Sligo, and on the following day the Commission was opened; it was a mere matter of form, for there were no trials in either of the courts, civil or criminal, in this county. On Wednesday following, they slept at Ballina, in the County of Mayo, and the next day proceeded to Ballinrobe; but along the line were ghastly evidences of the past struggle and of the vengeance that had followed in the track of Lord Cornwallis. Four weeks had elapsed since the French evacuated

¹ From one of the Dublin journals of that time.

Castlebar ; they were now prisoners of war ; but scores of the misguided people who joined them had been hanged on the trees that overhung the road, and their bodies were left for many weeks dangling for the birds of the air to pick. Even while the judges were on circuit, “ drum-head courts-martial ” continued to sit, either to punish or to avenge. Not high treason alone came under the cognizance of these abnormal courts, but other classes of crime, too—the houghing of cattle, for instance¹—which in happier times are left to the civil magistrate for investigation. Accusation before them was almost tantamount to a conviction. Where the prisoners were for the most part illiterate ; where no counsel appeared to defend them ; where the judges were ignorant of the laws of evidence, or, if not ignorant, yet, with true professional love of absolute command, probably despised them, what chance remained for the accused ? Alas ! that Justice should ever drop the scales and only wield the sword. Alas ! that liberty, too, like religion, should have her false prophets ; and alas ! for the misguided thousands who heeded their prophecies. How should the leaders of civil strife pause ere they begin ! How should they pause to calculate the chances of that success, without the probability of which, no matter what the provocation, no cause can be holy ! “ *Nullum numen adest, si absit prudentia.* ” Rebellion gains all or loses all, and to fail is to rivet the chains more tightly. Not like the Moloch of the ancients is liberty ; she delights not in useless sacrifice ! Not like the Saturn of mythology ; she devours not willingly her own children ! Rather like the prophet in the vision, she loves to gather together the dry bones, and bid the Spirit breathe upon them, that they may live and be an exceeding great army.

The bar and Bench proceeded from Ballinrobe to Galway, by Tuam, where the latter and many of the former were hospitably entertained by the Protestant Archbishop, Dr. Beresford.

On the 1st of October the Commission was opened in Galway by the Chief Baron, but we are unable to learn what business was transacted there. The Galway Assizes for 1799 were maiden ones, and the High Sheriff, William Gregory, of Coole Park,

¹ “ Saunders’s News-Letter.”

grandfather of my esteemed friend the Right Hon. William Henry Gregory, late Governor-General of Ceylon, presented white gloves, as usual, to the judges and bar.

No trials of interest are reported to have occurred on the Circuit during the first year of the present century. The Irish bar were at that time occupied in discussing the proposed union with Great Britain—a measure on which the Chancellor, Lord Clare, had set his heart. To carry this measure, it became necessary, above all things, to have the co-operation of the bar; for the bar was the only great body in the State that he feared as a serious obstruction to his plans. In its ranks were the most accomplished statesmen, the most formidable debaters, and the most earnest opponents of the Union. The Chancellor, therefore, resolved that they should be won at all hazards; and, to accomplish this end, he created a great number of legal offices which they were expected to solicit, and by which they would become vassals to the Castle. He doubled the number of bankrupt commissions, revived some offices, created others.

In the year 1800 the Irish Parliament died its shameful death! It was bought and sold. It consisted of three hundred members; of these three hundred, eighty-four were returned by the counties, cities, and important towns, whilst two hundred and sixteen sat for the boroughs. Of this latter number, two hundred were returned by a few individuals, and not by bodies of electors; from forty to fifty of the two hundred were returned by ten persons, whilst several of the boroughs had no resident electors whatever, and some of them but one! On the whole, two-thirds of the so-called representatives of the people were elected by less than one hundred individuals! Even the county representation, the only portion of this miserable assembly which could in any sense be deemed representative, was grossly defective alike in its principles and in its practical agency. Let it be that this assembly deserved to die, yet the traffic was concerning that which no man had a right to barter; and which, in the scale of crime, was the most criminal, the Irish who sold their country, or the English who bought it? It is not worth while to decide. There were patriots at the bar, there were patriots in the Irish House of Commons; but they were in the minority. Venality had eaten into the vitals of the country; religious ani-

mosity had paralysed her strength. It embittered the present with the memory of the past. It loaded the living with the crimes of the dead; and so, the victim of venality and of religious animosity, the Irish Parliament came to an unhallowed end! Had that Parliament granted Catholic Emancipation, had it reformed itself, had it been everything that it was not, then it never could have become what it did become—a suicide! It died its death—a Parliament stamped by Theobald Wolfe Tone as “shamelessly profligate;” by Sir Jonah Barrington as “politically vicious and intolerably corrupt;” by John Mitchell as “unpatriotic;” by Martin Haverty as “an assembly where the most nefarious corruption was openly practised!” The extinction of that profligate, vicious, corrupt, and unpatriotic legislative assembly was hastened by the Lord Chancellor of that day, Lord Clare, the first Irishman who had held the position of Speaker of the House of Lords for many years, and who had borne down all opposition in that House, as he was himself borne down in the House of Lords in England. In his very first speech in the United Parliament he abused the religion of his ancestors, and ridiculed his country, was rebuked by the Lord Chancellor of Great Britain (Lord Eldon), resumed, lost his temper, and stigmatized the opposition as “Jacobins and levellers.” “What!” exclaimed the Duke of Bedford; “we would not bear this insult from an equal; how shall we endure it at the hands of this mushroom nobility?”

The name of St. George Daly frequently appears in the cases tried on the Circuit. Brother of the Right Hon. Denis Daly, he had been in 1791 Mayor of Galway, and in 1798 Sheriff of that town, which in 1799 he represented in Parliament. In the same year he was appointed Prime Sergeant, and was re-elected for the borough of Galway. *A supporter of the legislative Union*, he was rewarded in 1801 with a seat on the Bench of the Court of Exchequer, and in 1803 was promoted to be one of the Justices of the King’s Bench. Mr. O’Connell had a low opinion of his judicial powers. “Anyone,” he said, “that had the last word with Daly was sure to win.” Advancing years compelled him to resign his seat on the Bench in 1822. Much of his time was, in his remaining years, spent at Dunsandle, in the County of Galway.

The Prime Sergeant, Arthur Browne, was also on the Circuit.

Of his parentage we know nothing. The College books inform us that he entered Trinity College in 1790, and that his father was a soldier. He was by birth an American, of most gentlemanly manners, excellent character, and very considerable talents, a good speaker, and Member of Parliament for the University of Dublin. He had by his learning become a Fellow, and Professor of Law. From his entrance into Parliament he had been a steady, zealous, and able supporter of the rights of Ireland. He had never deviated; he would accept no office; he had attached himself to Mr. Ponsonby, and was supposed to be one of the truest and most unassailable supporters of Ireland. In the session of 1799 he had taken a most unequivocal, decisive, and ardent part against the Union, and had spoken against it as a crime, and as the ruin of the country: he was believed to be incorruptible. "Nevertheless he was corrupted, and recanted every word he had ever uttered, deserted from the country, supported the Union, accepted a bribe from the Minister, was afterwards, in 1802, appointed Prime Sergeant; but shame haunted him, he hated himself; an amiable man fell a victim to corruption. He rankled and pined, and died of *a wretched mind and a broken constitution*." ¹ On the Connaught Circuit, which he joined in 1796, he was in extensive business. Had he lived, he must have reaped the highest rewards his profession afforded. With his death in 1805 died the office of Prime Sergeant, and the PRIME SERGEANTCY, which had lasted five hundred years, was then abolished. It is worthy of observation that the office of Sergeant in Ireland widely differed from that of Sergeant in England. In Ireland for three hundred years there never was more than one Sergeant at a time, that is from 1326 to 1627, the appointment being by patent, during which period it was his duty to accompany the Lord Deputy in his tours through the country, for which he received the handsome sum of four shillings a-day. We are now speaking of times as remote as 1357. Coming down to 1374, we find Prime Sergeant Cotterel appointed by patent to arrest ships, take inquisitions, and hold Sessions in the County of Wexford, for which he was allowed aforementioned salary and eight horses. Sergeant Barnewell's fee in 1422 was

¹ Sir Jonah Barrington's "Rise and Fall of the Irish Nation," p. 443, n.

£10, also an additional £5, as he was obliged to attend all Parliaments, Privy Councils, &c., on behalf of the Crown. Although the Sergeant had precedence of the Attorney-General, his fee fell far short of what the latter officer received. Thus Sergeant FitzSymon in 1574 had his fee of £10, whilst at the same time the Queen's Attorney-General, in addition to his fee of £10, had £100 "for his better encouragement and supportation of his charges, together with the wages of three horsemen and two footmen." In 1627 a second Sergeant, with a like fee, £10, was appointed, also "to have precedence over the Attorney and Solicitor-General as the Prime Sergeant had, and as was used in England." (Pat. Rolls). In 1761 a third Sergeant was appointed; and so matters continued until 1805, when the Prime Sergeantcy was abolished. In that year Arthur Moore was appointed "first Sergeant" only, the Attorney-General thenceforward taking precedence, after him the Solicitor-General, and next after him the first Sergeant-at-law—the Sergeants in Ireland being all appointed by letters patent. In England the Sergeants-at-law, formerly, constituted the whole legal profession, and the coif was to the advocates of those days all that the wig is to a barrister nowadays; and from the ranks of the Sergeants the judges were chosen, the barristers being then apprentices of the Sergeants, and sitting outside a bar that was drawn across the Court. The coif of which we have spoken was a white ecclesiastical skull-cap to cover the shaven tonsure, and outside the coif, and to hide the scandal of an ecclesiastic appearing in Court, after the Court of Rome condemned the Common Law Courts, they used to wear a black cap, which is now represented by a small round black patch on the Sergeant's wig, almost covering the white coif. To illustrate this, place a penny on a five-shilling piece. The penny will represent the black coif cap, and the five-shilling piece, being larger than the penny, will represent so much of the coif as is uncovered by the cap. The robes worn by the Sergeants were violet, the same as the judges now wear, while the judges wore scarlet. Until very modern times there was no such rank as Queen's Counsel, which was the invention of Lord Bacon. But it was not until the accession of George I. that the order was recognised, and the gowns that they wear are not of a historic nature, merely mourning gowns, once used by the Sergeants at the decease of either the sovereign, the

Lord Chancellor, or some other dignitary. In Ireland the bar, not being Sergeants, were the apprentices who sat outside the bar in Westminster, and who were called on certificates, by the Lord Chancellor of Ireland, for the Irish bar were bound to learn the laws in the English Inns of Court, not bound by the English, but by the Irish Benchers. For the English Benchers turned them out; and accordingly in 1428, at a Parliament held in Dublin, a memorial was drawn up, signed by the Lord Chancellor of Ireland, and presented to the king, "complaining of the exclusion of the Irish law students from the English Inns of Court, whither they were wont to resort to learn English laws, as they had done in times past":—

"SOVEREIGN LORD,—These are the articles which we, your humble lieges, the Lords Spiritual and Temporal, and Commons, of your land of Ireland, at your Parliament held in your City of Dublin, assembled before John Sutton, knight, your Lieutenant in the said land, the Friday next after the Feast of All-Hallows: We have commissioned Henry Fortesque, Chief Justice of Ireland, and Thomas Strange, knight, to deliver to you these articles that follow.

"We beseech of you to consider that inasmuch your laws of this land in every of your counties at all times have been used both in pleading and in giving judgments according to the laws used in England, and the learned men here have learned your said laws in the Inns of Court in your realms of England, and they have now been refused to be admitted into the said Inns of Court, contrary to ancient custom that hath been used in times before this; and we beseech you that ordinances may be made there, that your liege people of this land that go into England for their said learning, may be received into the Inns of Court as they have been of old times, so that the laws in this land may be continued to be learnt, considering that otherwise, when those who are now learned therein shall be dead, there shall be none in this land that shall know your laws, unless it be learnt there, which shall be a great disprofit to you and a great misery for us your poor lieges."¹

Another distinguished member of the Circuit was Luke Fox, a man of plebeian origin. He had been an usher in a school, was a

¹ Close Rolls. Betham's "History of the Constitution of England and Ireland," p. 353.

person of vulgar manners and coarse appearance, who had worked himself up, surmounting every difficulty; he won a sizarship in Trinity College, and next a scholarship. Supporting himself by grinding (to use a collegiate expression for taking pupils), he put his name on the Inns of Court, and we find him in 1793 a barrister on the Connaught Circuit. His next move was to marry a niece of Lord Ely, who had him returned to Parliament as one of his automata. In the divisions on the Union, he abstained from voting, and his abstention was rewarded in 1800 with a seat on the Bench in the Court of Common Pleas. In 1807 he went as judge the Northern Circuit, a region which was then predominated over by Orange magistrates and magnates. When he came to Enniskillen, he proceeded to deliver the jail. The names of two prisoners named Breslin and Maguire, who had been committed by Lord Enniskillen, without any offence charged, were returned to him, and while the committal specified no offence, it directed Breslin to be kept in solitary confinement. The judge directed the prisoners to be brought up before him, but the prisoners were gone, having been removed by an order of Lord Enniskillen. Thereupon the judge required the Earl personally to appear before him, but he disregarding the order, was fined £200. The Marquis of Abercorn had the unblushing effrontery to bring the matter by way of complaint before the House of Lords. A prosecution of the learned judge was in all seriousness demanded, but the matter fell to the ground. This judge frequently went the Connaught Circuit, until he resigned his seat on the Bench in 1816. He died on the 26th August, 1818.¹

Sergeant Duquerry, M.P., who had been in earlier years one of the ornaments of the Connaught Circuit, died in the year 1804.² He was a great orator at the bar, but was a failure in the House of Commons. In 1787 he had been raised to the dignity of Sergeant, which in 1793 he resigned. Had he retained his intellect, his fame would have rivalled, probably, that of Plunket, Burke, Burrows, O'Connell, or Sheil. The long vacation of 1793 he spent in making a tour of the Holy Land, and he had taken copious notes of his travels; but a sun-stroke, which he

¹ "Gentlemen's Magazine," 1819, p. 283.

² "Gentlemen's Magazine," 1804, p. 601.

got on his homeward voyage in the Mediterranean, deprived him of his intellect, and for several years before his death in 1803 he groped in utter idiocy.¹

Of the members of the Connaught Bar Society who had been promoted to the Bench, there was one, Robert Johnson, who, in 1806, was compelled to resign his seat in the Common Pleas, under the following circumstances :—

On the night of the insurrection organised by Robert Emmett in 1803, the Chief Justice, Lord Kilwarden, was barbarously murdered in Thomas Street. Some time after that unfortunate event Emmett was discovered, arrested, tried, and executed. On his trial Mr. Plunket was employed for the Crown. The circumstances of that trial are no novelty, but the result of it was a paper which appeared in Cobbett's "Annual Register" of the 10th of December, 1803, signed "Juverna," which falsely represented Emmett as describing Plunket thus : "that viper whom my father nourished ! He it was from whose lips I first imbibed those principles and doctrines which now by their effects drag me to my grave ; and he it is who is now brought forward as my prosecutor, and who, by an unheard-of exercise of the prerogative, has wantonly lashed with a speech to evidence the dying son of a former friend, when that son had produced no evidence, had made no defence, but, on the contrary, had acknowledged the charge and submitted to his fate."

For publishing this report, alleged to have been an outrageous, false, scandalous, and malicious libel, Plunket brought a civil action in England against Cobbett, and obtained a verdict ; £500 damages.

Cobbett gave up the manuscript, which was sworn to be in the handwriting of Mr. Justice Johnson, whom it was resolved to prosecute.

For this purpose, on the 20th of July, 1804, an Act was passed, by which it was enacted that a warrant obtained from a Court in Great Britain might be transmitted to Ireland, and executed there, and the accused transferred for trial to the Court from which the warrant had issued. Accordingly, on the 24th of November, 1804, a warrant was issued against Mr. Justice Johnson by the Chief Justice

¹ "Gentlemen's Magazine," p. 601.

of the King's Bench at Westminster, founded on a charge of libel. This warrant was endorsed by two magistrates for the County of Dublin, and under it the judge was arrested at his house at Miltown on the 18th of January, 1805. Johnson applied in the Court of King's Bench for a Writ of *Habeas Corpus*, to test the legality of the arrest. If illegal, the order must be for his release. The question, therefore, went into the King's Bench, and was there argued in support of the motion for the prisoner by Curran, with whom were Messrs. MacCarthy and William Johnson, of the Leinster Circuit, and by the Prime Sergeant, Arthur Browne, a Connaught lawyer, and by the Attorney-General O'Grady for the Crown; Mr. Justice Day was for the release, Chief Justice Downes and Mr. Justice Daly against it.

Another writ was then applied for from the Court of Exchequer, and Johnson was brought up on the 4th of February, 1805, before the full Court, the chief of whom was Barry Yelverton, Lord Avonmore. Mr. Curran, who had formerly been a friend of the Chief Baron, but who in latter years had been estranged from him, contended that the arrest was illegal; he said he was not ignorant that the extraordinary construction contended for by the Crown had just received the sanction of the Court of King's Bench in Ireland. He was aware that he might have the mortification of being told in another country of that unhappy decision. "And," he added, "I foresee in what confusion I shall hang down my head when I am told it. But I cherish the consolatory hope that I shall be able to tell them that I had an old and learned friend (Lord Avonmore), whom I would put above all the sweepings of their hall, who was of a different opinion; who had derived his ideas of civil liberty from the purest fountains of Athens and Rome; who had fed the youthful vigour of his studious mind with the theoretic knowledge of their wisest philosophers and statesmen, and who had refined that theory into the quick and exquisite sensibility of moral instinct, by contemplating the practices of their most illustrious examples.

"I would add, that if he had seemed to hesitate it was but for a moment; that his hesitation was but like the passing cloud that floats across the morning sun and hides it from the view, and does so for a moment hide it, by involving the spectator without even

approaching the face of the luminary. And this, this soothing hope" (in allusion to their long but now broken friendship) "I draw from the dearest and tenderest recollections of my life, from the remembrance of those Attic nights and those refections of the gods which we have partaken with those admired, and respected, and beloved companions who have gone before us, over whose ashes the most precious tears of Ireland have been shed."

Here Lord Avonmore burst into tears. "Yes, my good lord, I see you do not forget them. I see their sacred forms passing in sad review before your memory; I see your pained and softened fancy recalling those happy meetings, where the innocent enjoyment of social mirth became expanded into the noble warmth of social virtue, and the horizon of the board became enlarged into the horizon of man, where the swelling heart conceived and communicated the pure and generous purpose, where my slenderer and younger taper imbibed its borrowed light from the more mature and redundant fountain of yours. Yes, my lord, we can remember those nights without any other regret than that they can never more return, for—

‘ We spent them not in toys, or lust, or wine,
But search of deep philosophy,
Wit, eloquence, and poesy ;
Arts which I loved, for they, my friend, were thine.’ ”

The Court then rose for an hour, and Lord Avonmore sent for Mr. Curran, and they were reconciled each to the other, his lordship declaring that unworthy artifices had been used to separate them, and that they should never succeed in future.¹

On the return of their lordships, William Johnson, brother of Mr. Justice Johnson, followed on the same side, and Prime Sergeant Browne for the Crown. On the 7th of February the judgment of the Court was given against the release (Baron Smith dissenting). The learned judge was then taken in custody to England, a novel, and a "sorry sight" to see a judge in the dock! The trial commenced at the bar of the Court of King's Bench on the 23rd of November, 1805, and resulted in the jury finding a verdict of guilty. Sentence was deferred to the next term; but in the meantime the Whig Government of Mr. Fox came in. They

¹ "Life of Curran," by his Son, Vol. i., p. 148.

dropped all proceedings in the matter, and allowed him to resign on a pension of £1,200 a year.

Robert Johnson,¹ who had been very popular on the Connaught Circuit, was a well-read and entertaining man, extremely acute, an excellent writer and an agreeable companion. He was succeeded on the Bench by Mr. Justice Fletcher, a clever man and an excellent lawyer; but he had a surly temper, together with a truly feminine vanity concerning his personal appearance. Wherefore this vanity it is difficult to conceive, for he was a hard-featured man, with a red, pimply nose, heavy, shaggy eyebrows, which overhung a pair of piercing eyes, and when the whole face was surmounted by the judge's wig he presented a most extraordinary appearance. He was fond of going the Connaught Circuit, and enjoyed the wit and drollery of the bar, the witnesses and the suitors immensely; all the more, be it observed, as the flashes of fun must ever in such case be for the most part at some other man's expense than that of the judge. Fletcher was Crown Judge at the Galway Summer Assizes of 1813, and was trying a case of no great importance, when an Irish-speaking witness was called to give testimony. The interpreter was a solicitor, Mr. John Kirwan, of the family of Glan, a most respectable gentleman, and member of one of the oldest families in the County of Galway. He spoke the Latin language with great fluency, and was perhaps the wittiest man in the province. He was very eccentric; some said that his eccentricity bordered on insanity, and he is remembered to this day as Cracked John Kirwan. Judge Fletcher disliked him much; for, being a privileged person, it was his habit to go into the judge's chamber and eat his luncheon without invitation, and then return to Court and proceed with his interpretation. On the day we speak of the judge retired to lunch; but there was nothing left for him to eat, for Kirwan had devoured it all. Judge Fletcher returned to Court in a rage, his face swollen with anger. The jury reassembled, and the Irish-speaking witness got on the table, the interpreter by his side. It so chanced that the former, looking steadfastly at the judge, exclaimed in Irish, "*Dar mo chianseois, is an fear is granach dha chonnairch me ariamh.*" A suppressed titter followed this observation. The judge at once

¹ Sir Jonah Barrington's "Personal Sketches," pp. 245, 246.

required the interpreter to tell him what the witness had said, but he answered, "Oh, my lord, I could not tell your lordship." "You must tell, sir," replied the judge. The other vowed that he could not do so even though St. Peter came down to ask him. The judge vowed that he should tell, and to support his vow two constables were called in. "And now, sir," said the judge, "I am about to commit you to gaol for a month." "Oh," said Kirwan, "if it goes to that, I'll tell it without scruple. He says, my lord"—"Speak slowly, sir, as I must have it on my notes"—"that, upon my conscience, you are the ugliest man that ever I saw." The judge laid down his pen in anger. Shouts of laughter followed this remark so faithfully translated; and as the trial proceeded the half-starved and half-savage judge failed for a time, amid the convulsive and suppressed laughter of the audience, to give his attention to the case before him.

The Province of Connaught was now once more verging on revolt; and disturbances had risen to so alarming a height in the northern counties of Connaught during the whole of the year 1806, that the Whig Government issued, in the month of December, a special commission to Chief Justice Downes and Baron George, with the view of striking terror into a body of people styling themselves "Threshers." On the 5th of December the Grand Jury of the County of Sligo found true bills against John M'Donough, William Kearney, and many others, "for breaking and entering, on the 2nd of September last, after sun-set and before sun-rise, the dwelling-house of Peter O'Neil, at Cartron, in said county, and forcibly taking away his money." There were several other counts in the indictment, one of them for carding with a weaver's card the the said O'Neil, and thereby inflicting grievous bodily pain upon him, in order to compel him to enter the unlawful confederacy called the "Threshers." The jury were then sworn, and the prisoner given in charge, Messrs. Plunket and Bush, Attorney and Solicitor-General, appearing for the Crown, while with them were associated several lawyers of the Circuit, Messrs. Whitestone, James Darcy, and James Kirwan.

The prisoners were defended by Mr. Martin F. Lynch, Mr. Guthrie, Mr. R. Blakeny, and Mr. George J. Browne.

The Attorney-General stated the case for the Crown. He said that this was a branch of a vast conspiracy got up to overturn the

Church, seize upon her property, and starve her clergy. Nor were the aims of this lawless and unchristian confederacy confined to attacks on the Established Church, for there was an association binding their misguided members not to pay the Roman Catholic clergy either their dues. "The overturning of altars, the extinction of all religious principles, the casting off of all regard for a future world, and the rending of the ties which bind them to earth as well as to heaven, were the aim of that society to which the prisoners belonged."

Witnesses were then examined to bring the several offences set forth in the indictment home to the prisoners, and, the case for the Crown closing —

The prisoner's counsel, Mr. M. Lynch, repelled the accusation that they sought to rob either their own clergy or the ministers of the Established Church of their dues, and denied that they were members of any such body as "the Threshers." They proved to demonstration an *alibi* on the 2nd of September, the day named, and they called witnesses to prove that on that day they were attending a fair at a distant town in the County of Cavan.

The prisoners were acquitted, but in the County of Mayo, where the Right Hon. Denis Browne had pioneered the operations of the commission, a different result was attained, and about a dozen persons were found guilty and executed.

A.D. 1808.—In this year the first mail-coach started from Dublin to Galway, another to Sligo, each with a treble guard, armed with blunderbusses. On arriving at Ballinasloe there was a diligence proceeded to Castlebar, thus contributing to the comfort of the Circuit which barristers must avail themselves of, though their doing so was contrary to the rule of the Connaught Bar.

We are now about to lay before our readers the narrative of a case deeply sensational, in which a distinguished member and sometime secretary of the Connaught Bar Society was plaintiff, and sought to recover from the defendant £20,000 damages for criminal conversation with his wife. The case is that of *Guthrie v. Sterne*, which was tried before Lord Norbury in the Court of Common Pleas in Dublin on the 15th of July, 1815.

Messrs. Daniel O'Connell,¹ Whitestone, k.c., Vandeleur, k.c.,

¹ Mr. O'Connell, though not one of His Majesty's Counsel, took precedence next after the Attorney- and Solicitor-General, his patent of precedence dating 1 Wm. IV., A.D. 1830.

Crampton, North, Walsh, Phillips, and Costello were counsel for the plaintiff, all of them, save Mr. O'Connell, being members of the Connaught Bar Society.

Messrs. Burroughs, K.C., Goold, K.C., Burton, K.C., and Antisell appeared for the defendant.

Although Mr. Phillips had been but three years on the Circuit, he had already gone to the foremost rank ; he had been previously on the north-west Circuit, but, having got into some scrape with the seniors of that bar, for having written lampoons on the father and on one of their quondam circuiters, Mr. Justice Fletcher, he joined the Circuit of his native province in 1812. Born in Sligo in 1787, he had spent his early years in that town, had entered the University of Dublin when he was fifteen, and had been called to the bar in 1811. Having remained some years on the Connaught Circuit, he went, in 1821, to the English bar, and there declined, during the chancellorship of Lord Brougham, a silk gown, and also a seat on the Judicial Bench of Calcutta. In 1842 he was appointed by Lord Chancellor Lyndhurst a Commissioner of Bankruptcy at Liverpool, and in 1846 Sir James Graham made him Commissioner of the Court of Insolvent Debtors, the duties of which he discharged with great credit until his decease in 1859. Phillips was the author of several poems : " The Consolations of Erin," " The Loves of Celestine and St. Aubert," both composed in 1811, and " The Emerald Isle," composed in 1812, which the " Quarterly Review " says " was a perfect stream of praise, a shower of roses on every person who is named in it, from alpha to omega."¹ Mr. Phillips's speech in *Guthrie v. Sterne*, delivered in 1815, was published in book form in 1816, and immediately became the subject of severe criticism.² He felt aggrieved by the censures of his reviewers, and answered the charges in a letter to the editor of the " Edinburgh Review." In 1818 his " Recollections of John Philpot Curran " appeared, a work thus noticed by Lord Brougham :—" This is one of the most extraordinary pieces of biography ever produced. Nothing can be more lively and picturesque than its representations of the famous original. The

¹ " London Quarterly Review," Vol. xvi., p. 33.

² " Quarterly Review," Vol. xvi., pp. 27, 37, 389. " Edinburgh Review," Vol. xxv., p. 389.

reader can hardly be said not to have known Curran and Curran's contemporaries."

Of this distinguished lawyer Mr. Christopher North thus speaks: "Charles Phillips was worth a gross of Sheils; there were frequent flashes of fiery imagination and strains of genuine feeling in his speeches, that showed nature intended him for an orator." Of his remarkable speech delivered in *Guthrie v. Sterne*, for criminal conversation, tried before Lord Norbury, many and various opinions have been expressed, both in the United Kingdom and in America.

Mr. Costello opened the pleadings by stating that it was an action brought against the defendant for criminal conversation with the plaintiff's wife, and that damages were laid at £20,000. Mr. Phillips stated the case.

"After some prefatory remarks, he said that the plaintiff was Mr. John Guthrie—by birth, by education, by profession, by—better than all—by practice and by principles, a gentleman. He called on the jury to believe that it was not from the commonplace of advocacy, or from the blind partiality of friendship, that he said of the plaintiff, whether considering the virtues that adorn life, or the blandishments that endear it, he had few superiors. Surely, if a spirit that disdained dishonour, if a heart that knew not guile, if a life above reproach, and a character beyond suspicion could have been a security against misfortunes, his lot must have been happiness.

"He (the counsel) was then speaking in the presence of that profession of which Mr. Guthrie was an ornament, and with whose members his manhood had been familiar, and he must say of him with a confidence that defied reproach, whether he considered him in his private or in his public station, as a man or as a lawyer, that there never breathed a being less capable of exciting enmity towards himself, or of offering, even by implication, an offence to others. Having spent his youth in the cultivation of a mind which must one day have led him to eminence, he became a member of that profession by which he was now surrounded. Possessing as he did a moderate independence, and looking forward to the most flattering prospects, it was natural for him to select for his partner in life some one who should adorn his fortunes and reduce his toils. He

found such a person, or thought he found her, in the person of a Miss Warren, the only daughter of an eminent solicitor.

“Young, beautiful, and accomplished, she was adorned with all that earth or Heaven could bestow to make her amiable. Virtue never found a fairer temple; beauty never veiled a purer sanctuary. The graces of her mind retained the admiration which her beauty had attracted, and the eye her charms fired became subdued and chastened in the modesty of their association. She was in the dawn of life, with all its fragrance around her, and yet so pure, that even the blush which sought to hide her lustre but disclosed the vestal deity that burned beneath it! No wonder an adoring husband anticipated all the joys this world could give him; no wonder the parental eye which beamed upon their union saw in the perspective an old age of happiness and a posterity of honour. Methinks I see them at the sacred altar joining those hands which Heaven commanded none should separate, repaid for many a pang of anxious nurture by the sweet smile of filial piety, and, in the holy rapture of the rite, blessing the power that blessed their children, and gave them hope that their names should live hereafter. It was virtue’s vision; none but fiends could envy it.

“Year after year confirmed the anticipation—four lovely children blessed their union. Nor was their love the summer passion of prosperity; misfortune proved, afflictions chastened it. He owed his adversity to the benevolence of his spirit—he went security for friends; those friends deceived him, and he was obliged to seek in other lands that safe asylum which his own denied him. He was glad to accept an offer of professional business in Scotland during his temporary embarrassment.

“With a conjugal devotion Mrs. Guthrie accompanied him, and in her smile the soil of a stranger was a home—the sorrows of adversity were dear to him. During their residence in Scotland, a period of about a year, they lived as they had done in Ireland, and as they continued to do till this calamitous occurrence, in a state of uninterrupted happiness. Happy at home—happy in a husband’s love, happy in her parent’s fondness—happy in the children she had nursed—Mrs. Guthrie carried into every circle (and there was none in which her society was not courted) that cheerfulness which never was a companion of guilt or a stranger to innocence. Her

husband saw her the pride of his family, the favourite of his friends, at once the organ and ornament of his happiness. His ambition awoke, his industry redoubled, and that fortune, which, though for a season it may frown, never totally abandons probity and virtue, had begun to smile upon him. He was beginning to rise in the ranks of his competitors, and rising with such a character, that emulation itself rather rejoiced than envied.

“It was at this crisis, gentlemen, in this noon-day of his happiness and day-spring of his fortune, that, to the ruin of both, the defendant became acquainted with his family. With the serpent’s wile and the serpent’s wickedness, he stole into the Eden of domestic life—poisoning all that was pure, polluting all that was lovely—defying God—destroying man—a demon in the disguise of virtue—a herald of hell in the paradise of innocence. His name, gentlemen, is William Peter Baker Dunstanville Sterne. Of his character he (counsel) knew but little, and was sorry he knew so much ; but, if he was rightly instructed, he was one of those vain and vapid coxcombs whose vices tinge the frivolity of their follies with something of a more odious character than ridicule—with just head enough to contrive crime, but not heart enough to feel for its consequences—one of those fashionable insects that folly has painted and fortune plumed for the annoyance of our atmosphere—dangerous alike in their torpidity and their animation, infecting where they fly, and poisoning where they repose.”

In this impassioned strain counsel proceeded to state how the parties became acquainted, and to describe the efforts made by the defendant to rob the plaintiff of the affections of his wife. He then went on to give a glowing narrative of how Mr. Guthrie went in July, 1814, to attend the dinner usually given by the Connaught Bar Society, previous to going circuit, and how on returning home he discovered that his wife had fled :—

“Alas ! he was never to behold her more. Imagine, if you can, the frenzy of his astonishment on his being informed by Mrs. Porter, the daughter of the former landlady, that, about two hours before, she had attended Mrs. Guthrie to a confectioner’s shop, that a carriage had drawn up at the corner of the street, into which a gentleman, whom she recognized to be Mr. Sterne, had handed her, and that they instantly departed. Mr. Guthrie could hear no

more : even at the dead of night he rushed into the street, as if in its own dark hour he could discover guilt's recesses. In vain, a miserable maniac, did he traverse the silent streets of the metropolis, affrighting virtue from its slumbers with the spectre of its ruin. But imagine you see him, when the day had dawned, returning wretched to his deserted dwelling, seeing in every chamber a memorial of his loss, and hearing every tongueless object eloquent of his woe. Imagine you see him, in the reverie of his grief, trying to persuade himself it was all a vision, and awakened only to the horrid truth by his helpless children *asking him for their mother!*

"Gentlemen, this is not a picture of fancy; it literally occurred: there is something less of romance in the reflection which his children awakened in the mind of their afflicted father; he ordered that they should be at once dressed in mourning. How rational sometimes are the ravings of insanity! For all the purposes of maternal life, poor innocents! they have no mother; her tongue can no more teach, her hand can no more tend them; for them there is no 'speculation in her eyes'—to them her life is worse than death; as if the awful grave had yawned her forth, she moves before them, shrouded in sin, the guilty burden of the peaceless sepulchre. Better far their little feet had followed in her funeral than that the hour which taught her value should reveal her vice; mourning her loss, they might have blessed her memory, and shame need not have rolled its fires into the fountain of her sorrow.

"As soon as reason became sufficiently collected, Mr. Guthrie pursued the fugitives; he traced them successively to Kildare, to Carlow, to Waterford, to Milford Haven, on through Wales, and finally into Devonshire, where all clue was lost. I will not follow them through their joyless journey. But philosophy never taught and the pulpit never enforced a more imperative morality than the itinerary of that accursed tour promulgates. Oh, if there be a matron or a maid in this island balancing between the alternatives of virtue and crime, trembling between heaven and hell, let her pause upon this one, out of the many horrors I could depict. I will give you the relation in the words of my brief; I cannot improve on the simplicity of the recital.

"On the 7th of July they arrived at Milford Haven; the captain of the packet dined with them, and was astonished at the magnifi-

cence of her dress. The next day they dined alone, but towards evening the servant heard Mr. Sterne scolding and beating her! Mrs. Guthrie then rushed into the drawing-room, and throwing herself in an agony on the sofa, she exclaimed:—‘Oh, what an unhappy wretch am I! I have left my home where I was happy, seduced by a man who has deceived me. My poor husband! my dear children! Oh, if even they would let my little William live with me, it would be some consolation to my broken heart.’

“ ‘Alas! nor children more can she behold,
Nor friends, nor sacred home.’ ”

Mr. Phillips then called on the jury for exemplary damages.

Evidence was then given in support of the plaintiff’s case, and Mr. Burrows, K.C., on behalf of the defendant, spoke in mitigation of damages.

Lord Norbury, in his charge to the jury, expressed his “great satisfaction that the trial of this cause had given an opportunity to the counsel who had stated the plaintiff’s case of delivering a speech which he heard with unmixed pleasure—a speech containing as brilliant a display of classic eloquence, and as fine effusions of manly feeling, as ever fell from the lips of any counsel in these courts. He has detailed to you the leading features of this case, and has drawn on his fancy for a striking picture of the defendant, MR. WILLIAM PETER BAKER DUNSTANVILLE STERNE. Gentlemen, in portraying the character of the defendant, Mr. Phillips has (if he might use a nautical expression) raked him fore and aft, from stem to stern. But had the defendant been in the possession of as many Christian virtues as Christian names, he would not have been guilty of the crime of seduction.”

Having commented at great length on the evidence, his lordship concluded by informing them that “he would not detain them by a repetition of the travels of the defendant and his unhappy victim from Carlow to Waterford, and from thence across the Channel to Milford Haven; but the jury would agree with him, that the cruel treatment the unfortunate lady received there formed the most disgusting part of ‘Sterne’s Sentimental Journey.’ With these observations he would leave the question of damages entirely in the

hands of the jury." The jury then retired, and in less than an hour they returned with a verdict for £5,000.

Sterne was now a ruined man. Being unable to pay the damages, he was arrested and thrown into the Marshalsea, where he remained for eight-and-twenty years; for damages in this description of action, as the law stood, could not be wiped away by the Insolvent Debtors' Act.

Mr. Guthrie returned after a few years to practise at his profession; but his heart was shaken by sorrow to its inmost depths. He remained to the end of his life a member of that Circuit he loved so well. Of his faithless wife, her name, as if she had never been, was banished from each lip and ear. We have heard it said, with what truth we know not, that she retired from the world, and won to heaven her dreary road by blighted and remorseful years. That may be so; but the truth, we apprehend, is that

" Her fate lies hid
Like dust beneath the coffin lid ! "

The old saw of "many men of many minds," was never better illustrated than it was in this year, 1814, on our Circuit; the question that arose at the Spring Assizes being *quatuor pedibus*, the same as that which arose at next Summer Assizes; the judges being different. In both it was the barbarous system of duelling; in both men were shot dead; and in combats where glory was not to be won, men who had fought neither for faith, nor for fireside, nor for home, nor for country. At the Spring Assizes was put upon his trial a gentleman named Fenton, moving in a respectable walk of life, a solicitor who had a dispute with his counsel, a Mr. Hillas, a barrister on the Circuit, concerning fees, which one said were paid, and which the other said were not. The counsellor and the attorney went out in the neighbourhood of Sligo, the ground was measured, the word was given, and Hillas was shot through the heart. It was for this, at the Sligo Assizes, was indicted the man who had robbed his fellow-man of his life. True bills having been found by the Grand Jury, the prisoner was given in charge to the jury. The circumstances which were proved were not sought to be disproved; and Mr. Justice Fletcher, turning to the jury, recapitulated the facts which they had just heard. The law,

he said, was plain, that it was a case of wilful murder ; but he vowed to God he never heard of a fairer duel in the whole course of his life. Need it be said that, without turning in the box, the jury acquitted the prisoner. At the next Summer Assizes Mr. Justice Mayne presided in the Crown Court at Carrick-on-Shannon. The unbending gravity that was never seen to smile was his, and before him a duellist had to struggle for his life ; and he found, too, that jurors lent him in many instances a willing ear. Other judges followed in his footsteps. And now, in his charge to the Grand Jury, he is reported to have said that “ duelling was the pest of society, and that it must be put down by the strong hand and the outstretched arm of the law. It was intolerable that a poor man should suffer punishment for a fight at a fair, when with warm blood men were slain, while the rich man should be acquitted and glorified for a fight, when with cold blood his fellow-man was slain by him.” The bills in this case were then found—we advisedly refrain from giving names—and the trial proceeded. The great majority of the jury were for wilful murder, but the minority were friendly either to the system or to the prisoner, and he escaped ; and it was an escape ; for if the jury had found him guilty, no human hand could have saved him from the gallows. To Mr. Justice Mayne may be attributed the change that came quickly over the minds of men. They who had been slaves to public opinion now dared to brave it ; and criminal informations for challenging, or provoking to fight a duel, became matters of frequent occurrence west of the Shannon. Duelling is now happily a thing of the past ; but it is worthy still of a place in history, and of a sigh and a smile of contempt.

A.D. 1815.—On the 1st of April, was opened the County Galway Court-house, for the reception of the then going judges of Assize, Justices Fletcher and Osborne, who pronounced a well-merited eulogium on the Grand Juries who had, in three years, commenced, prosecuted, and finished so splendid a testimonial of their high respect for the laws, and of their anxiety for the due administration of public justice. The plot of ground on which the Court-house stands was, in times past, consecrated to the service of the Most High, when the Franciscan Friars dwelt there, prayed there, and preached there. By the Charter of the town of

Galway, 21st August, 1678, the precincts of the County Court-house, which is within the County of the Town of Galway, is excepted therefrom,¹ and forms a portion of the County of Galway.

A.D. 1806.—The name of George Joseph Browne disappears from the Connaught Bar Book in this year. He had been in many of the cases of interest on the Circuit; but how he got into business it is impossible to guess, for he came from the dregs of society. His name appears as legatee in the will of Francis Higgins, the "Sham Squire," who thus, in 1791, writes: "I leave to my friend, George Joseph Browne, of Chancery Lane, Barrister, his security for money in my possession, together with £20 for mourning, and the like to his wife for mourning, and also to his son Joseph £150, to be paid when he attains the age of twenty-one." Mr. FitzPatrick says that this George Joseph Browne was a member of the Irish bar, who had been one of the Sham Squire's staff on the "Freeman's Journal," but originally "a shoeless, shirtless, strolling player in the wilds of Connemara," as Magee records. From 1787 to 1800, he is announced "as the Sham's chief quill-driver." A parody on "The Night before Larry was Stretched" pointedly alludes to Browne:—

" Oh ! de night before Edgwort was tried,
De council dey met in despair ;
George Jos—he was there, and beside
Was a doctor, a lord, and a player."

"The eulogies of Lord Chief Justice Clonmell's unconstitutional conduct, which appeared in the Sham's Journal, are understood to have been written by Browne. Browne, who became a Crown Counsel, in dedicating to Lord Clonmell his report of the trial of Mr. Keon for the murder of George Nugent Reynolds, dilates on "the patience, perspicuity, legal learning, and sound ability that at present adorn that Court."²

¹ Hardiman's "History of Galway," App. xliv.

² "Ireland before the Union," by William J. FitzPatrick, Esq, LL.D., M.R.I.A., p. 105.

CHAPTER VIII.

AMONGST the many trials which took place on the Circuit, we have not found, previous to the comparatively modern date of 1817, even one of those cases which now crop up so frequently—actions for breach of promise of marriage. In that year, such an action was brought, not indeed by the lady against the fickle swain, but by the lover against his fair deceiver. At the Lent Assizes for the County of Galway, this case was tried; and, as we are informed by the local papers of the day, so great was the interest taken in the proceedings, that every lodging-house, even the humblest in the town, was filled to overflowing. “Lodging-house keepers,” writes the correspondent of the “Freeman’s Journal,” “are making now a rich harvest—beds a pound a night—but then it is not so expensive when you get others to join you. Three of us slept in one bed last night in a double-bedded room, and four in the other bed. It was like the black hole of Calcutta.” We can well believe it, and we will—all—readers and writers—join in the ejaculation of Melibæus, “Non equidem invideo.” Long before the appointed time, respectably dressed crowds anxiously awaited the opening of the Court; and when at length the doors were flung open, a rush was made, and instantly every available seat was filled. The position of the parties, the presence of Mr. O’Connell (who appeared as special counsel for the defendant), of Mr. Phillips, and of many leading members of the Irish bar, deepened the interest taken in the proceedings.

The plaintiff, Lieutenant Blake, was a member of an old and respectable Galway family. He entered the Royal Navy before he had completed his eighteenth year, had served for ten years on board the *Hydra* line-of-battle ship, and had been in many engagements at sea; but the engagement in which he was now

involved on land was one in which fame was not to be achieved; one in which the *auri sacra fames*, the accursed thirst for gold, was the only moving power; one in which the fair object of his admiration was, indeed, a vain old woman of sixty-five, but possessed of a fee-simple estate—such were her real charms!—of eight hundred pounds a-year. She was known in Galway as the Widow Wilkins, and the case of *Blake v. Wilkins* is still spoken of as the Widow Wilkins's case. Her husband had been a staff-surgeon at the siege of Quebec, and anyone who takes the trouble of reading an account of that memorable siege will read that General Wolfe fell into the arms of an officer, who was one of his staff close by. That officer was Dr. Wilkins. He was young and handsome, and after some time was married to the subject of our memoir, a Miss Brown, a lady then young, and possessed of great talents, remarkable beauty, and winning manners. Returning to Europe in 1775, Dr. Wilkins and his wife were presented at the Court of George III., and it is related that even that monarch was so fascinated by her charms that he spent an hour in animated conversation with her at St. James's. The happiness, however, of her and her husband (for they were happy) was soon to end. He caught the fever which raged in 1775 in London, and on the Christmas night of that year Mrs. Wilkins knelt by his death-bed. He had been possessed of an ample fortune, and had devised a portion of it, amounting to £800 a-year, to his widow. Heart-broken at her loss, she turned to reflect on the divine maxim, that "favour is deceitful and beauty is vain." Had she been a Catholic, possibly she would have retired to a convent. For forty years Mrs. Wilkins lived in seclusion on her estates near Galway. But the year 1815 brought a change. The battle of Waterloo terminated the long struggle between the powers of Europe; a general peace made unnecessary the great armaments which the empire had previously maintained by land and sea; and the discharged officers of the army and navy returned to idleness, and many of them in poverty, to their homes. Lieutenant Blake had been twice round the world in the *Hydra* man-of-war; but the *Hydra* was now in dock, her crew had been discharged, and so it behoved him to look about for any favourable chance—"any port in a storm." His mother and sister resided, in straitened circum-

stances, in the immediate neighbourhood of the town of Galway, and close to Brownville, where Mrs. Wilkins was spending the closing years of her life. One would say that beads and prayer-books ought then to have been uppermost in her mind; and that when the thought of wedded happiness came back upon her, it should have been with the sigh of memory rather than with the smile of hope.

But we are told by the poets that the mind of woman is inscrutable. The Sphinx of mythology was a female; and though we should be sorry to adopt as our own the sentiment of the Roman, "Mulieri ne credas," yet we certainly are not an Œdipus to read the enigma! One thing is certain, that the ladies of Mr. Blake's family were attentive to Mrs. Wilkins, and that when they heard her speak of former times—*tertiam ætatem hominum vivebat*—when they heard her speak of the happiness she had enjoyed with her husband—they hinted that all was not yet lost, and that perhaps in the future she might partake of a felicity greater than she had ever known.

By degrees the idea of marriage was once more forced on her mind, and the old lady permitted herself to be entrapped, by the most revolting flattery, into a promise of marriage. But no sooner had she accepted the plaintiff's suit than she was besieged on all sides by his friends; a watch was set upon her movements, and she eventually fell completely into the grasp of these designing people, and was shut out from all intercourse with her family. At last, in a moment of wisdom, she resolved—and she acted on her resolution—to break off this fatal connection, and (*hinc illæ lacrymæ*) hence sprang the celebrated case of *Blake v. Wilkins*.

The presiding judge was Baron Smith, and as it was one of his peculiarities to come down late to Court, the crowded assembly were compelled to remain in expectation from early morning until his lordship had had his lunch at two o'clock.

Messrs. Vandeleur, K.C., Lynch, Jonathan Henn, and Crampton appeared for the plaintiff; while Mr. O'Connell (special), Mr. Charles Phillips, and Mr. Everard were counsel for the defendant. A special jury having been sworn, the case was opened by Mr. Crampton, who, in the dry and, to the many, unintelligible language of pleading, went through the counts, all varying the cause

of action, but all agreeing in a marvellous and intelligible manner to claim the sum of £5,000 for damage done to the feelings of the gallant sailor.

Mr. Vandeleur then stated the plaintiff's case, after which evidence was given in support thereof. Mr. O'Connell was expected to state the case for the defendant, but was unable to do so, owing to a painful hoarseness, and he, therefore, requested Mr. Phillips to take his place.

If ever counsel succeeded in laughing a case out of Court, Mr. Phillips did so in this instance; but, departing from all precedent, his shafts of ridicule were aimed at his own client. "How vain-glorious," he said, "is the boast of beauty! How misapprehended have been the charms of youth, if years and wrinkles can thus despoil their conquests, and depopulate the navy of its prowess, and beguile the bar of its eloquence! How mistaken were all the amatory poets, from Anacreon downwards, who preferred the bloom of the rose and the thrill of the nightingale to the saffron hide and dulcet treble of sixty-five!" (Here his client rose and left the Court.) "The reign of old women has commenced, and if Johanna Southcote converts England to her creed, why should not Ireland, less pious, perhaps, kneel before the shrine of the irresistible Widow Wilkins?"

Referring to the plaintiff, he said: "For the gratification of his avarice he was contented to embrace age, disease, infirmity, and widowhood, to bend his youthful passions to the carcase for which the grave was opening—to feed, by anticipation, on the uncold corpse, and cheat the worm of its reversionary corruption. Educated in a profession proverbially generous, he offered to barter every joy for money! Born in a country ardent to a fault, he advertised his happiness to the highest bidder! and he now solicits an honourable jury to become the panders to this heartless cupidity! Harassed and conspired against, my client entered into the contract you have heard—a contract conceived in meanness, extorted by fraud, and sought to be enforced by the most profligate conspiracy! Trace it through every stage of its progress, in its origin, its means, its effects—from the parent contriving it through the sacrifice of her son, and forwarding it through the instrumentality of her daughter, down to the son himself unblushingly acceding to

the atrocious combination by which age was to be betrayed and youth degraded, and the odious union of decrepitude and precocious avarice blasphemously consecrated by the solemnities of religion ! Gentlemen of the jury, remember I ask you for no mitigation of damages. Nothing less than your verdict will satisfy me. By that verdict you will sustain the dignity of your sex—by that verdict you will uphold the honour of the national character. By that verdict you will assure not only the immense multitude of both sexes that thus so unusually crowd around you, but the whole rising generation of your country, that marriage can never be attended with honour, or blessed with happiness, if it has not its origin in mutual affection ! I surrender with confidence my case to your decision.”

Mr. Phillips having resumed his seat, the jury found for the defendant. The Court then rose, and Mr. Phillips, exhausted, and exulting at having overthrown his adversary, left the Court; but hardly had he emerged into the street when Mrs. Wilkins rushed at him, and struck him violently with a horse-whip on the face and shoulders. He then ran away as best he could, and was soon safe in the bar room.¹

Mr. Phillips delivered other and not less remarkable speeches on the Circuit. In Galway he was counsel in an action for libel, brought by the Rev. Cornelius O'Mullan, a Catholic clergyman, against McCorkill, the editor of the “Derry Journalist;” and in Roscommon he was counsel for the plaintiff in an action for seduction—the case of *Connaughton v. Dillon*.

Mr. Phillips did not remain at the Irish bar sufficiently long to be amongst those who were in the race for promotion. At the English bar he maintained his character for imaginative declamation. Rather too ornate, the imagery of his fancy threw a charm over every case, however dull, in which he was engaged. His fame was, however, clouded in later years; for, when acting as counsel for the foreign valet, Courvoisur, who had murdered his master, Lord William Russell, he earned the condemnation of the profession by unnecessarily pledging his own belief in the innocence of his client, who was on his trial for wilful murder, at a time

¹ “Freeman's Journal.”

when he (Mr. Phillips) had ascertained, in a private interview, an admission of that felon's guilt. The learned gentleman was afterwards appointed a commissioner of insolvents in London, which lucrative post he held till his death.

A.D. 1819.—Jonathan Henn, who in 1817 had been Secretary of the Connaught Bar, gave notice in the early part of that year of his intention to quit their ranks, as he was about to join the Munster Circuit. He had been six years on the Connaught, and neither he, nor the suitors, nor the attorneys, nor the judges knew that there was a spark of the fire of genius in the young man. Never during that long period did he receive a fee, nor never expected to receive one. An attorney, who was under obligations to his brother William on the Munster Circuit, went one morning to his lodgings in Galway, on the first day of the Summer Assizes in 1818, brief in hand. He was shown into Henn's sitting-room, adjoining his bed-room: fast asleep lay the counsellor; the servant awoke him, saying: "There was an attorney, a Mr. Kelly, in the next room, wanted to give his honour a brief." Thinking it a practical joke played by some of his brethren of the circuit, he shouted, "Tell Kelly, the attorney, to go to the devil, and to take his brief and his fee with him." Kelly, a pompous fellow, sent him a hostile message before ten minutes, and before noon Jonathan Henn had to apologise, and to see at the same time his first and his last chance on the Connaught Circuit vanish. It is said that at that Assizes he was called upon to fill the Vice-President's chair on the occasion of the judges dining with the bar, and it became his duty to propose their healths, as also that of the registrars and Mr. O'Connell, who had "come down special;" and now for the first time did it appear that a rich mine of talent lay concealed in the briefless and indolent barrister who had so long travelled the circuit. The announcement he made at the next bar meeting, that he was about to leave the Connaught Bar Society, was received with pain by those around, who felt that when the opportunity should come, he was the man that must reflect credit upon the circuit to which he belonged. "The bar" then—we use the words of the resolution—"feeling and reflecting on the loss they were about to sustain, and being desirous to express the esteem they entertained for him, authorised

and directed the secretary to invite Mr. Henn to their term dinner." He accepted the invitation, and his name appears in the Bar Book as a guest on that evening of his *quondam* brethren. On another circuit his latent talent became patent, soaring sometimes in his oratorical flights to heights rarely attained to by the most polished orators at the bar. He was associated with Thomas (afterwards Lord) O'Hagan, q.c., Richard Lalor Sheil, q.c., Gerald FitzGibbon, q.c., and Francis MacDonough, q.c., in the defence of Daniel O'Connell in 1843. The only judicial post that this accomplished lawyer filled in life was that of Chairman of the County of Donegal. He died unmarried.

On the same day that Jonathan Henn was admitted a member of the Connaught Bar Society, John Henry North was also admitted; and few men ever joined the Circuit with more brilliant antecedents than he. In Trinity College he outstripped every competitor both in classics and science, whilst of the Historical Society he was the brightest ornament. It was an established custom that each of its periodical sessions should be closed by a parting address from the chair, reviewing and commending the objects of the institution. The task, as a mark of honour, was assigned to Mr. North. It was the last of his academic efforts, and was pronounced to be a masterpiece; and the author was urged to extend the circle of his admirers by consenting to its publication, but his modesty prevented him from acceding to this proposal. Immediately after his "call" he chose the Connaught as his Circuit. "His progress, however flattering it might be to a person of ordinary pretensions, did not realize the auspicious anticipations under which his coming was announced." When speaking of this accomplished young man, writers ask, "How has this come to pass, that such a genius in college was such a failure in after life?" The reply is, that "his mind wanted boldness and determination of character. Conscious that the elements of greatness were within him, one of its most necessary attributes he was still without—a sentiment of masculine self-reliance, and along with it a calm and settled disdain for the approbation of little friends, and the censure of little enemies, and the murmurs of the tea-table. Hence it is that he never redeemed the pledges of his youth."¹ In political life Mr. North was an

¹ "Curran's Sketches," Vol. i., p. 218.

advanced Liberal and supporter of Catholic Emancipation; and yet the most conspicuous occasion upon which he appeared as counsel was at the trial, in the Court of Queen's Bench, of the political rioters at the Dublin theatre, commonly called "The Bottle Riot Case." Here John Henry North, the foe of the Orangemen, was engaged as their counsel to defend them. The circumstances of the case were these. In 1821 the Marquis of Wellesley was appointed Lord Lieutenant of Ireland; his wife was a Catholic; his counsel, who had accompanied him from England, Mr. Anthony Richard Blake, was also a Catholic; and Catholics, still inadmissible to the Bench, were yet given to understand that the days of religious ascendancy were numbered. "The glorious, pious, and immortal memory" had not been, as it formerly had been, given at the Castle on the 12th of July. In a few nights afterwards the Lord Lieutenant attended the theatre in state, such State visits being known to theatrical people by the name of "Command Nights." On this occasion an organized party of Orangemen, numbering nearly a hundred, packed the pit and upper gallery of the theatre, and having caused much interruption and disturbance throughout a portion of the performance, and having used the most offensive language, such as "Down with the Papist Government," "A groan for the Popish Lord Lieutenant," one of their number hurled, it was said, a whiskey bottle at the Viceregal box, and narrowly missed its object. Hence this scandalous affair is remembered in the books as "The Bottle Riot Case." The Attorney-General prosecuted, and the prisoners were defended by Mr. North. It would be difficult to conceive a more perplexing office. He, the long-tried friend of the Catholic cause, now the professional confidant of the Orange Lodges, and chosen defender of their acts and doctrines. His duty he discharged with great talent, and with (what was not expected)¹ consummate boldness. Mr. North went into Parliament in 1827 as M.P. for Milbourne Port; in 1830 he was returned for Drogheda; and in the same year he ceased to be a member of the Connaught Circuit, having, on the death of Sir Jonah Barrington, been offered the Judgeship of the Court of

¹ "Curran's Sketches of the Irish Bar," Vol. i., p. 231.

Admiralty, an office he accepted and enjoyed for one year. In 1831 he died. His wife was sister to the Right Honourable John Leslie Foster, one of the Barons of the Court of Exchequer in Ireland. He is said to have been in large practice, was most fascinating in manners, and greatly regretted on the Circuit.

Mr. John D'Alton was a remarkable man on this Circuit, which he joined in 1815, and was the intimate friend of Mr. North. About the year 1824 he was in extensive practice as a conveyancer, and was engaged in most cases on title. Few men have done so much as he did to throw light on the history of his country. With pride the Connaught Bar Society can number amongst its associates the writer of so many works of the deepest interest. The representative of one of the most ancient families in the County of Westmeath, being the direct descendant of Sir Walter D'Alton, who, as recorded in the Office of Arms, secretly married Jane, a daughter of Louis, King of France, and having thereby incurred that monarch's displeasure, fled to England, whence he passed to Ireland with Henry II., on the invasion of that country, John D'Alton was son of William D'Alton, Esq., of Bessville, County of Westmeath, and of his wife Elizabeth Leynes. He was born in the year 1792, and having been educated by the Rev. Joseph Hutton, he entered Trinity College, Dublin, where he graduated in due course. Selecting the law as his profession, in 1811 he entered the Middle Temple, London, was called to the Irish bar in 1813, and immediately joined the Connaught Circuit.

Mr. D'Alton's first published work was a metrical romance, entitled, "*Dermid; or, Erin in the days of Boroihme*," which appeared in the year 1814, and was highly spoken of by Sir Walter Scott. His attention as an author was subsequently directed to Irish historical literature, and in 1818 he successfully competed for the Conyngham gold medal, offered by the Royal Irish Academy for the best essay on "*The Ancient History, Religion, and Arts of Ireland from the time of the Introduction of Christianity to the English Invasion*," which was published in the "*Transactions of the Academy*." In 1833 Messrs. Caldwell, of Dublin, commenced the publication of "*The Irish Penny Magazine*," edited by Mr. Samuel Lover, who was supported by a force of competent writers, foremost of whom was Mr. D'Alton, his contributions being chiefly

"Illustrations of Irish Topography." He was also a contributor for many years to the pages of "The Dublin University Magazine," "The Gentleman's Magazine," and to several of the leading periodicals of the day. In 1838 he was elected a corresponding member of the Society of Antiquaries of Scotland, and in the same year he published the "Memoirs of the Archbishops of Dublin," a valuable repertory, and also his "History of the County of Dublin," for which he had been for many years collecting materials. In 1844 he published a "History of Drogheda and its Environs." His "Annals of Boyle" appeared in 1845. This work gives the history of the country from the earliest period to the year 1245, when the annals terminate; it contains notices of many old Irish families, which render the work of great value to the antiquary and to the genealogist.

Mr. D'Alton produced in 1855 his "Illustrations, Historical and Genealogical, of King James's Army List, 1689," a work of great research and merit, and which soon ran through a second edition. His last work was the "History of Dundalk," published in 1864. Besides all these he has left nearly 200 volumes of manuscripts, which we hope one day to see published. Gifted beyond other men with every quality that could endear him to his professional brethren, he lived long after he had retired from the Circuit. For several years before his death he was a constant reader at the King's Inns Library; and even then, when the weight of old age was upon him, he would endeavour to climb the high ladders of the library for a book rather than disturb the junior barristers near him, though need it be told, that what he considered as the infliction of a trouble would have been looked upon as a pleasure by them? Often has the writer of these pages helped to procure for him those books from which the good old man extracted such a store of archæological erudition. Surrounded by a worthy and loving family, John D'Alton died on the 20th May, 1868, leaving after him a name of stainless honour, much worth, and great learning. His hearse was followed to the Glasnevin Cemetery by many members of the Royal Irish Academy, of which he was a distinguished member, by the judges, and by the leaders, Protestant as well as Catholic, of the Circuit to which he had formerly belonged. At the first meeting, after his decease, of the Royal Irish Academy,

Lord Talbot de Malahide pronounced a graceful tribute to his literary and social character.

1822.—At the Galway Summer Assizes in this year occurs one of the last, perhaps the last, of the cases in which a Roman Catholic priest was prosecuted under the then antiquated Popery Acts, and the strangest part of the case was that the counsel for the Crown was not ashamed to ridicule the cause he was advocating. It appears that the Rev. John O'Connor, Parish Priest of Kilconnell and Aughrim, stood indicted that “he, on the 17th of February last, did in Kilconnell celebrate marriage between Thomas Curley, a reputed Papist, and Mary Parry, who had professed herself to be a Protestant, within the space of twelve months previous to the date of her marriage, contrary to the peace of our Lord the King, his Crown and dignity.”

Mr. Daniel, K.C., stated the case for the prosecution. The accused was a clergyman of position in the Roman Church, respected by all who knew him; and the crime he stood indicted for was a violation of that law which makes it criminal for a Roman Catholic priest to perform the ceremony of marriage between a couple, either of whom had within twelve months been a professed Protestant. The reverend defendant, counsel said, might have not intentionally violated that law, but the Hon. and Most Reverend Doctor Trench, and the Rev. Mr. Martin, Rector of the Parish, who had originated this prosecution, thought otherwise. The jury must be aware that the 32 and 33 George III., chapter 21, ss. 12 and 13, restricts “Romish priests from performing the service of marriage between Protestants, or between those who had been Protestants within twelve months previously, and Papists, unless first performed by the Protestant clergyman.” The young lady admittedly had been a Protestant in this case, in which she was an unwilling witness. She had become a Catholic and married, and she will now be examined as to the state of facts, as also will be the Rev. Mr. Martin, whose church she was wont to attend. He (the learned counsel) would put his witnesses on the table, and he ventured to hope that it would be the last time in his life that he would be employed in such a prosecution. The above facts having been proved, the *scienter*—the knowledge of the priest as to whether he knew the lady had been a Protestant within the twelve months—became the object of serious inquiry.

Counsel for the reverend traverser were Messrs. North, K.C., Blakeney, Fallon, and Donelan, and Mr. Everard, though not retained, lent his assistance.

Mr. Justice Burton charged for an acquittal.

The jury accordingly acquitted the traverser, Mr. Daniel, K.C., expressing his disgust at holding such a brief.¹

How changed the spirit of the times! Had the case occurred in the last century, counsel, judge, and jury would have all lent a willing hand to punish the audacity of a Papist priest acting as he had done, under similar circumstances.

In this year Thomas Burton Vandeleur, Sergeant-at-Law, father of the Connaught bar, having been appointed Judge of the Court of King's Bench, retired from the Circuit, upon which he had long held a leading position.

Amongst the members of the other branch of the legal profession in those times was James Hardiman, who has also left his name on the page of history. His business was entirely confined to the Connaught Circuit. His "History of Galway," his "History of Iar-Connaught," and his "Irish Minstrelsy," are well known.

Another barrister on the Circuit at this period—we speak of 1826—was Mr. Martin French Lynch, whom we have already noticed. His name, as we have seen, is associated with the great lawyers of the day in many cases of interest. He was a native of the town of Galway, and joined the Connaught Circuit immediately after his call to the bar.

The Lynches of Galway are descended from a German family, whose cradle was the city of Lintz, in Austria. They came to England soon after the Conquest, and settled in Bristol, whence they removed to Galway, and became one of the foremost amongst the tribes who had conferred upon them, by Pope Innocent VIII., the privilege of electing their own prelate or warden. Mr. Lynch was younger son of Mr. Lynch of Renmore, whose family has since divided into two branches, now represented, the elder by John Wilson Lynch, Esq., D.L., J.P., of Renmore, and the other by Marcus Lynch Staunton, Esq., of Clydagh. Being a man of great

¹ "Freeman's Journal," Aug. 19, 1822.

ability, and besides being widely connected with the leading families of his native county, the subject of our memoir became advising counsel to most of them. It is not unworthy of observation, that a poem on his death is to be found in the pages of the Book of the Connaught Bar—the only poem in the Bar Book.¹

The remainder of our chapter is a notice of murders and of their detection. The case we shall first select is remarkable for the singular plan struck out by the murderer to escape suspicion. His name was M'Guinness. He was a peculiarly powerful-looking man, standing upwards of six feet, strongly proportioned, and of great muscular strength. His countenance, however, was by no means good; his face being colourless, his brow heavy, and the whole cast of it stern and forbidding. He was a farmer, residing at a village nearly in a line between the little town of Claremorris, and the smaller but more ancient one of Ballyhaunis, near the borders of the County of Mayo. With him lived his mother and wife, a young woman to whom he had not been long married at the time of which we speak, and with whom he had never any altercation such as to attract the observation or interference of the neighbours.

It was on a market evening of Claremorris, in the year 1820 (M'Guinness had gone to the market), when his mother, a withered hag, bent with age, hobbled with great apparent terror into the cabin nearest to her own, and alarmed the occupants by stating that she had heard a noise in an inner room, and that she feared her daughter-in-law was doing some harm to herself. Two or three of the neighbours returned speedily with her, and entering the chamber saw the lifeless body of the unfortunate young woman lying on the ground. There was no blood nor mark of violence on any part of the body except on the face and throat, round which a neck-handkerchief was suffocatingly tied. She had evidently been strangled, and both face and neck were blackened and swollen.

Who, then, had perpetrated the deed? was the question whispered by all the neighbours as they came and went. M'Guinness, according to his mother's account, had not yet returned from the market: the old woman would not have had strength to

¹ "Lines on the Interment of Martin ffrench Lynch, an old and valued Member of the Connaught Bar." A.D. 1826.

accomplish the murder, even if bloody-minded enough to attempt it; and it was an impossibility that the young woman herself could have committed self-destruction in such a manner.

While the callous old woman was thus so skilfully supporting her part in the murderous drama, the chief performer, who had not as yet been seen to have returned from the market since the commission of the horrid deed, crossed a neighbouring river, and on the opposite side chanced to meet a country tailor, who was proceeding from one village to another to exercise his craft. And here the murderer, as murderers generally do, lost his judgment; for a plan suggested itself to him on the spur of the moment, on which he acted, and which was afterwards to recoil with destruction on his head. He forced the tailor to take on his knees the most fearful oaths that he would never divulge what should then be revealed to him, and that he would act in strict conformity with the directions he should receive, threatening, at the same time, if he should refuse compliance, to beat out his brains, and fling him into the river.

The affrighted tailor having taken the required oaths, M'Guinness confessed to him the murder of his wife, using at the same time horrible imprecations, that if ever a word on the subject escaped the tailor's lips, he would, dead or alive, take deadly vengeance upon him. He then proceeded to cut and dinge his hat in several places, and inflicted various scratches on his head and face, directing the tailor to assert that he had found him attacked by four men on the road on his return from Claremorris; and, to give more appearance of probability to the tale, he obliged his involuntary accessory after the fact to bear him on his back to a cabin at some distance, as if the murderer were too weak to proceed thither himself after the violent assault committed upon him.

On reaching the cabin with this troublesome man on his shoulders, the tailor told the story as directed; while M'Guinness himself, showing his scratches, and detailing in a weak voice the assault on him by men whom he did not know, affected such faintness as to fall from the chair on which he had been placed. A farrier was then procured at his request, and to such lengths did he proceed with the plan he had struck out, that he got himself blooded, though the farrier shrewdly observed at the same time

(according to the evidence given by him subsequently) that there seemed to be no weakness whatever about him, except in his voice, and that his pulse was strong and regular.

Overcome with terror, the tailor on the following day disappeared from this part of the country, and did not return (though M'Guinness and his mother were at once committed on suspicion) till the approach of the ensuing assizes, when he came forward, probably as much induced by the large reward for the murderer's conviction as by the desire of disburdening himself of the fearful secret that weighed upon him.

There was much interest excited at the Spring Assizes of 1820 by the trial of the two accused; they were arraigned together before Sergeant (afterwards Mr. Justice) Vandeleur; Mr. George French, Mr. Crampton, and Mr. Kelly appearing for the Crown, while Mr. Guthrie and Mr. Daniel defended the prisoners.

Mr. French said that he never in his experience came across so extraordinary a murder as this. It reminded him of the stories in the "Arabian Nights," both the murder and the detection. He then stated the case, and called the tailor, whose evidence was to the effect already mentioned.

His testimony, bearing strongly the impress of truth, singular though it was, was strengthened by that of the brother of the deceased, who seemed greatly affected while deposing that he had met M'Guinness in Claremorris on the day of the murder, and that the handkerchief afterwards found round his sister's neck had been worn by the murderer on that occasion.

There was not an iota of evidence for the prisoners, and accordingly a verdict against the male prisoner was handed in, though his vile mother was acquitted for want of evidence, much to the regret of a crowded court.

Sergeant Vandeleur then passed sentence, condemning the prisoner to death; but that sentence was never carried into execution, for on the day following the conviction he was found hanged in his cell by the same handkerchief with which he had murdered his unfortunate wife. How that handkerchief got back into his possession no man could tell.

About the year 1823 there lived in the town of Galway a victualler named Hughes; he was not a Galway man by birth, nor

originally a victualler by trade, but having settled there some years previously, he entered into the business, and soon realized a moderate fortune. At the time of which we are now speaking there were few gentlemen in the county with whom his word would not be sufficient for £100 worth of cattle, and this man, who was the envy of his brother victuallers, bore strongly the apparent marks of prosperity, and a contented mind shone forth in his florid, good-humoured, open countenance.

He was, we are told, a model for others in all the relations of life: a good father, a kind friend, and a strict observer of his religious duties. When, however, he indulged too freely in drink, as he sometimes used to do, he was wont to give way to a jesting turn of mind, which was, sometimes at least, not pleasant to his neighbours. Now it did so happen that he had regaled himself one day—it was in the summer of 1823—and by-and-by this propensity became observable. While in the height of his humour, scattering his witticisms broadcast, there entered his shop a pedlar, upon whom Hughes directed his battery.

“You look, Mr. pedlar, as if a good beefsteak would not do you much harm this morning.”

“Begorra, you may say that,” said the pedlar.

“Well, my friend,” rejoined the butcher, “I should not like to trust you with the price of a beefsteak.”

“Ah, then, maybe you’d be right in that same,” rejoined the stranger, fixing his eye upon him like one striving to recall a half-forgotten dream. “Though, Mr. Hughes, it is not everyone that is to be taken by his looks.”

“It is in hemp you ought to be dealing, my friend; take care did you mistake your trade.”

“Faix, then, if every man got his due,” said the pedlar, “more than me would be dailin’ in hemp. But you needn’t be so hard on me all out, Misther M’Cann.”

On hearing this name—it was his true one—which he had not heard for years, the victualler started, while a blaze which deepened the hue of his cheek flitted across his brow, and the next moment subsided into monumental paleness. He recovered himself, however, immediately, and remarking, laughingly, how curiously people were at times mistaken for others, took an opportunity of following

the pedlar, who had advanced into the shambles hard by, and invited him to breakfast the next morning.

Punctual to the hour the pedlar made his appearance at Hughes's stall, situated in one of those archways which are a characteristic of this Spanish-built city, and which strike the stranger so much as he wanders through it for the first time. The breakfast was excellent and ample, and the pedlar was received with great apparent cordiality and welcome, and was pressed immoderately to consider himself at home, and to partake plentifully of the fare before him. He did ample justice to the meal, although he discovered his entertainer several times scanning him with an expression of countenance that he by no means liked. The breakfast over, Hughes invited his guest to take a walk, stating that he would show him part of the city; and accordingly they sallied forth from the archway, which was off Shop Street, and immediately contiguous to the fine old collegiate Church of St. Nicholas, and within a pistol shot of the house, over the door of which is inserted the slab containing the far-famed death's head and cross-bones. Thence he led his guest to an eminence on the south-east side of the city, called Fort Hill, which terminates in a precipice, lashed by the waves when the tide is in, whilst, scattered over its surface, are several deep wells.

The victualler made no allusion whatever, during breakfast, to the fact that the pedlar had called him M'Cann on the previous day, nor to the county from which they both came. As they went along, however, he made some inquiries, as if to sound his companion. But the latter had become wary. In fact, as they left the crowded parts of the town behind, fear began to grow upon him as he found himself alone with Hughes, even in daylight and adjoining a bustling city.

This fear was strengthened by the manner of Hughes, who sometimes strode on a few steps, as if labouring under excitement, and then, when halted, began to stammer out some observations to his companion, while he occasionally flung searching glances around, as if to ascertain who might be in view. So, after having twice or thrice expressed his wish to return to the city, on reaching the first of the wells, the pedlar refused to proceed any farther, and turned to retrace his steps at an increased pace, although he did not ven-

ture to run. Calling on him in vain to return, Hughes now darted furiously after him with the intention of forcing him back, but he was restrained by the sight of some persons, and the pedlar pursued his way to the city with a step quickened by fear. The stranger lost no time in repairing to the house of the mayor, to whom he accused Hughes, or M'Cann (which was his real name), of having perpetrated a murder in the County of Down ten years previously. The charge was so extraordinary, and so utterly at variance with the peaceable, prosperous, and even humorous habits of the accused, that the mayor, at first, utterly scouted the tale, saying that the pedlar must be completely mistaken as to the identity of the man. But the accuser was so clear in his statement, recollecting M'Cann so well while a journeyman baker (his original trade), before the commission of the murder, and was so intimately acquainted with everything connected with him, that in a short time, after having detailed the morning's proceedings, he satisfied the mayor of the well-groundedness of the charge, and the butcher was placed under arrest. He was immediately transmitted to Downpatrick, and at the next assizes was put on his trial for wilful murder,¹ before Mr. Justice Moore. Great interest was felt in the proceedings, and many of his friends came from Galway to hear the case; for it seemed to them incredible that a man of his spotless reputation should be placed in the felon's dock. It appeared also marvellous that the Crown could obtain witnesses of the murder ten years after its commission. The witnesses, however, were yet living who had been examined at the coroner's inquest, and who made depositions before the magistrates.

The first witness produced was a man named John Walker, and he remembered having seen the body of one Owen M'Adam floating in the canal near the bridge of Coulavey, in the County of Down, on the day in question. In his pockets there was a small morsel of ginger, but no money. On the clothes of the deceased there were marks of blood, and his body presented the appearance of much violence; whilst on the canal-banks were foot-marks, stamped deeply into the sand, as if a deadly struggle had taken place there.

¹ "Freeman's Journal" and "Saunders' News-Letter" for 5th August, 1823.

Witness had seen the deceased, who was a horse-dealer, on the evening before, in company with the prisoner, who was then dressed in a grey fustian jacket.

Fanny M'Donnell next deposed that she was the owner of a tavern in Newtown Hamilton ; that she remembered the night of the murder distinctly, and that the deceased, accompanied by three men, one of whom wore a grey fustian jacket, partook of refreshments at the bar of her house on that evening ; that she saw deceased take a bundle of bank-notes and some ginger out of his pocket while at the table, and that he told her he was a horse-dealer.

The third witness, John Chambers, deposed that he saw deceased on the evening of the murder in Mrs. M'Donnell's tavern, in company with three other men ; that he took out a quantity of notes, and also a watch with the picture of four soldiers on the dial. Never saw such a watch either before or after. Between five and six o'clock deceased left in company with the other men. Had a grey horse, with a switch tail, by the bridle.

The fourth witness, James Chambers, heard the prisoner, to whose identity he now swore, tell the deceased that he would accompany him from Newtown Hamilton to Lisburn. Deceased was leading a white-coloured horse.

The fifth witness was James Rooney, who lived near Lisburn ; remembered the deceased coming to his house on the night of the alleged murder, accompanied by M'Cann. It was then eleven o'clock at night, and he appeared to have been under the influence of drink. M'Cann made him take two glasses more. They had a grey pony with them.

The sixth witness was a person named Adam Sloane. He was a baker, and remembered that he had M'Cann in his employment at a salary of six shillings a-week ; he left his (witness's) employment on the Thursday before the murder. The cause of his leaving was that there were races in the neighbourhood, and, as permission had been refused him to attend those races, he threw up his place and went there. M'Cann was then about twenty years of age, and very slender ; he was now very corpulent.

James Vance, the seventh witness, lived at Tandragee ; remembered the 26th of July, 1813. On that day a young man about twenty-one years of age called at his house ; he had with him a dark

grey colt with a switch tail ; he asked witness for grass for a month for him ; he left the horse there and never returned for it. Could not swear positively it was the prisoner, but believed it was. The young man offered to sell witness a watch with the picture of four soldiers on the dial.

The eighth witness was the pedlar. He deposed that he had been first a baker, next a basket-maker, and now a pedlar by trade ; that he had been on the canal the night of the murder, that he passed M'Cann and the deceased as they were going towards Lisburn, the latter being very tipsy and leading a grey horse, with a long switch tail, by the rein ; that he knew M'Cann well, inasmuch as they were both bakers ; he could distinctly see by the moonlight the faces of both. On the next day he heard of the murder, and saw the man whom he had passed a few hours previously taken out of the water. He met M'Cann a day or two after, and told him that he was suspected of the murder, and to fly for his life. M'Cann, denying all knowledge of the affair, took from his waistcoat pocket a watch with a dial, on which there was a painting of soldiers.

On cross-examination the witness admitted that he had not made at the time any depositions, nor given any evidence at the coroner's inquest, the reason he assigned being that he was apprehensive lest he should be himself accused of the murder. He had followed the basket-making business until lately, and carried in his pack a number of fancy baskets. For the last five years he had travelled over the North of Ireland, supporting himself, and at the same time seeing the country, and stopping at his customers' houses wherever he went. By some accident he visited Sligo early in the summer of the year 1823. He had disposed of all his things, and purchased in that town a new stock of goods, which he put on his back, and he turned towards Newtown Hamilton. As he was leaving Sligo for his northern home, he was attracted by the sound of martial music. It was a regiment that was leaving Sligo for Castlebar, and it occurred to deponent that he could not do better than accompany the soldiers, that he would have music and company on his way, and perhaps dispose of his trinkets to the men at the end of their journey. His success was more complete than he had expected, and, accordingly, in Castlebar he replenished his pack,

and proceeded on his journey, without well knowing which road he had taken, disposing of his goods as he went along; he found himself in Headford on the next night, and, rising early the following morning, proceeded towards Galway; and it was on the day after his arrival that he saw M'Cann for the first time after so many years. On being questioned as to his reason for visiting Galway, he replied that from the moment he had left Castlebar until his arrival in Galway he asked no questions, but he felt led on by some irresistible attraction towards that city.

Other witnesses were then examined, who positively swore that the prisoner was the same man who had been with the deceased at the tavern at Newtown Hamilton, and that many of them had known him from his infancy.

The Rev. William Baker was next examined. He was a magistrate of the County of Armagh. Knew a watchmaker, named Joyce, in Newtown Hamilton. It appeared from the watchmaker's books that the watch, with the picture of soldiers on the dial, was left there on the 17th of August, 1813.

James Hardman Burke, Esq., Mayor of Galway sworn: Knew the prisoner for several years in the town of Galway; his name was then Hughes. Witness took him into custody immediately before the last Galway Assizes. He had gone to the Meat Market when he met Hughes, and told him that he had a very unpleasant duty to perform; that there was a serious charge made against him, and that, if it was not cleared up, he must commit him. The prisoner said that it was all spite, that he never was in Newtown Hamilton, that he had come from the County of Tyrone; that, if he had even been drinking with deceased, nobody could prove that he murdered him, and finally he denied that his name had ever been M'Cann.

John L. Reilly, collector of customs, was examined: Dealt with the prisoner as his butcher, saw him in the Galway gaol, after his committal, and was astonished at seeing him in gaol. The prisoner told him he was charged with murder down the north; witness asked him what part of the north he was from; he replied, Dungannon; witness then asked him, did he know the Knoxes? He replied he knew Hugh Knox. There was no such person as Hugh Knox living near Dungannon. Several witnesses were ex-

amined to prove that no such person as either Hughes or M'Cann had ever lived near Dungannon.

This closed the case for the prosecution. The defence was then gone into, and four witnesses were examined. Joseph Moon swore that he knew Bernard M'Cann well, and would not wish to swear whether the prisoner was that man or not. Sarah Wilson also knew Bernard M'Cann; was positive that the prisoner at the bar was not that man.

The evidence of the two other witnesses was immaterial. The jury retired to discuss the evidence, and before an hour had elapsed, returned with a verdict of "Guilty," and with a recommendation to mercy on the ground of his subsequent good conduct.

The learned judge then, addressing the prisoner, said, that though the evidence was of a circumstantial nature, and brought forward after a lapse of many years, yet no doubt remained on his mind of the propriety of that verdict; a more barbarous murder could not be imagined or conceived by the mind of man. For the sake of filthy lucre he had deprived the poor trader of his life, and had drugged him with drugs for days before he had done the fatal deed.¹ It was marvellous how the hand of God had brought the criminal to justice. "Let no idea of pardon or of mercy cross your mind, for the gates of mercy are closed against you in this world. On Thursday morning next you must die." The last sentence of the law was then formally passed. His death, it would appear, was a torturing one, as the rope broke; and previous to his being again conducted to the gallows it was necessary to strengthen him with a draught of wine whilst seated on his coffin; for it was the barbarous custom of those times to place before the eyes of the condemned the coffin that should be in a few hours his resting-place.

The singular detection of M'Cann created, as may be supposed, a great sensation in Galway. When men remembered that he had been foremost in all charitable undertakings, and had been equally liberal to all Christian sects; when they spoke of his industrious

¹ Although the judge is reported to have spoken of the prisoner drugging the deceased, no evidence of that fact is given in either of the reports of the "Freeman's Journal" or "Saunders' News-Letter."

and blameless life, and of his apparent want of all compunction after the perpetration of the fearful deed, they marvelled much, though, indeed, they could find a parallel in the celebrated case of Eugène Aram.¹ M'Cann's case is still remembered in the City of the Tribes, and it is invariably pointed to as an evidence that the hand of God will one day work out the detection of the murderer.

It is satisfactory to know that the wretched man confessed his guilt on the gallows, and that this is one amongst the many cases which illustrate the truth of the popular belief, that punishment must follow upon crime.

¹ "Newgate Calendar."

CHAPTER IX.



ALTHOUGH intense political excitement prevailed in the Province of Connaught, during the years immediately preceding the Catholic Emancipation of 1829, still that excitement left but little mark upon the pages of the history of the Connaught bar. Amongst those who transgressed the law, few were brought to trial.

Blood-stained riots indeed took place, connected with the agitation against the payment of tithe ; but as popular sympathy was with the agitator, and as those who in the struggle had broken the law were looked upon as martyrs in a good cause, and as such received shelter and protection from the peasantry, few were brought to justice, and the historian of the Connaught Bar has little to record on this subject. The only incident noticed in the newspapers of the year 1828, in connection with the Circuit, was the purchase of a "new waggon with springs" for the Connaught Bar Society. It is strange that the purchase of this waggon is not noticed in the Bar Book. This was doubtless owing to an oversight of the secretary, who appears to have been, since 1800, a pluralist, inasmuch as he held at the same time the office of "waggoner." The several regulations concerning the waggoner may be found contained in the lengthened resolution, moved and carried on that subject, by Mr. Crampton in 1813. A sum of a pound a-year was paid by each barrister on the Circuit to the waggoner, and he was responsible to the bar for the circuit luggage. So long as the judges and the bar rode round circuit on horseback, there was no necessity for the waggon, as the circuit luggage was then carried in their saddle-bags ; but the introduction of carriages largely increased the circuit expenses of the bar, and many in consequence were compelled to walk from town to town, sending their

luggage on by the waggon. For be it remembered, that it would not then be tolerated that a practising barrister should travel the Circuit in a stage-coach, or stop at an hotel, in company perhaps with attorneys and witnesses; he might drive in his own gig or carriage, or in company with any number of his brothers of the bar; or Mr. Briefless might tramp from town to town, but was precluded from availing himself of the public vehicle the stage-coach.

If the mode of travel during the seventeenth and eighteenth centuries, such as we have long ago described, had its disadvantages, still these disadvantages were not without their counterpoise. Thus the members of the bar were usually invited on the journey to the houses of the nobility and gentry; and it is notorious that there were then but few of their number unmarried. On the circuit list of one hundred years ago, an unmarried barrister was a *rara avis*.

The loves of the lawyers were then themes for universal comment; and some of those learned lovers have left to us some strange conglomerations of love and law. Imagine a lawyer lover thus addressing the idol of his idolatry:—

“ Fee simple, and a simple fee,
And all the fees in tail,
Are nothing when compared with thee,
Thou best of fees—*Fe-male*.”

Other verses in the same professional strain have happily escaped destruction. Here are “Loving Lines to Bessy.”

“ My head is like a title-deed,
Or an abstract of the same,
Wherein, my Bessy, thou mayst read
Thine own long-cherished name !

“ Against thee I my suit have brought :
I am thy plaintiff lover ;
And for the heart that thou hast caught,
An action lies in trover.

“ Alas ! upon me, every day,
The heaviest costs you levy ;
Oh ! give me back my heart,—but nay,
I feel I can’t replevy.

“ Say, Bessy dearest, if you will
 Accept me as a lover?
 Must true affection file a bill
 The secret to discover ?

“ Is it my income's small amount
 That leads to hesitation ?
 Refer the question of account
 To Cupid's arbitration.”¹

In the same Note Book are a multitude of episodes. But there is one and one only we shall give, being a poetic opinion in which the learned counsel informs widows of intestate husbands what their rights are or may be under that distressing state of facts, as follows :—

“ By the laws of the land,
 It is settled and planned,
 That intestates' effects shall be spread,
 At the end of the year,
 When the debts are all clear,
 'Mid kindred as here may be read.

“ And first 'tis well known,
 If child there be none,
 Nor issue, of any deceased,
 To the widow will fall
 The one half of all
 The riches her husband possessed.

“ And next for her share,
 If children there are,
 Or child, or descendant, if any,
 She cannot have more,
 What e'er be the store,
 Than one-third of every penny.”

It is worthy of remark that this poetic barrister of the Connaught Circuit was married, and lived happily with his wife for years ; she died, and in his diary he says, “ She fell asleep in the Lord, and is now happy in heaven. I wish I could say as much for my second wife ! ”

The romantic lovers on the Connaught Circuit, somehow,

¹ “ Note Book of a deceased Connaught Barrister in the Eighteenth Century.”

though we are far from hinting selfish motives, seem rarely to have fallen in love with portionless girls; and anyone who turns over the pages of the "*Romance of the Peerage*," or of the "*Landed Gentry*," will observe how frequently the Connaught Circuit barristers intermarried with the fair daughters of the great western proprietors. The incomes of those young men, though they usually obtained considerable fortunes with their wives, were yet, for the most part, slender; but then they seldom plunged into those wanton extravagancies which have kept aloof from the hymeneal altar men whose incomes ought to have been amply sufficient to maintain their families in comfort.

As in England, during the last century, the junior barristers and their wives lived in chambers, so in Ireland the junior barristers and their wives lived in equally inexpensive establishments. The fees marked on the old briefs appear to have been for the most part moderate. We have had in our possession briefs for counsel in the reign of Charles II., when the fee for a leader of the bar was £1 3s. 4d. In earlier times—long before the foundation of the Connaught Circuit, so far back as the reign of Edward IV.—the usual fee was 4s., and marked thus: "To Counsellor Fylpott, for his opinion, 3s. 8d., with 4d. for his dinner." Allowance, however, must be made for the difference in value of money in those times and at the present day. In the *Annals of the Priory of All Hallows*, now Trinity College, memoranda of retaining fees to counsel, equally moderate, may be seen.¹

The expensive habits of later times are not confined to the womankind of a barrister's establishment. He himself has had his tastes refined, and the expensive circuit dinners of modern days were unknown in the seventeenth and eighteenth centuries. In one item, indeed, that of wine, the men of the present are gainers; for it is difficult for one accustomed to the temperate habits of this half-century to imagine the excesses of the century which preceded it. A prodigious quantity of wine (whiskey being inadmissible) was drunk at the circuit dinners, and the lawyers who, on rising from table, found themselves compelled to hasten onwards to the "next town," not unfrequently spurred across the country in a

¹ *Annals of the Priory of All Hallows*, p. 14.

state of perilous intoxication. Nor were these drinking propensities confined to the bar. A judge whose habit it had been, when a member of the House of Commons, to take part in after-dinner sittings, brought with him to the Bench those proclivities which he had acquired in the senate. It was his peculiar practice to adjourn at six o'clock, and at half-past seven to resume business, and frequently he was to be found at midnight charging a jury. His argument, when pressed on the propriety of justice after dinner, invariably was, "The laws are made during nightly sittings, and why not administer them during nightly sittings?" An amusing story, for the accuracy of which, however, we do not indeed vouch, is told of this learned judge. He is stated on St. Patrick's Day to have as usual adjourned the Court until eight o'clock in the evening. At the appointed time his lordship, with uncertain step, and a remarkably unpleasant hiccup, ascended the Bench; the bar, with ruddy faces, that told of wine, took their seats; the jury were sworn; and the prisoner, having been given in charge, pleaded *not guilty*.

At length the counsel who held the prisoner's brief rose and said—"Gentlemen of the jury, it is my painful duty to appear for the prosecutor here.

"*Prisoner*.—That's the gentleman who was paid to defend me.

"*Counsel for the Crown*.—Ah, then it's a mistake; you are for the defence, I am for the prosecution, ha! ha! ha!

"*Judge*.—That's a good joke. Ahem! ahem! I mean to say, the gravity of justice requires that we should sift, I say sift, every case that comes before us. Prisoner at the bar, you have been convicted of having——

"*Counsel for the Prisoner*.—Your lordship mistakes. The man is not tried yet.

"*Judge*.—These interruptions from the bar are very unbecoming. It is impossible that I can sit here to be interrupted by counsel. (A general laugh, in which the jury joined.) I must commit if this sort of conduct is repeated. Prisoner at the bar, what have you to say to the charge?

"*Counsel for the Prisoner*.—My friend has not made out any case, and I submit there is nothing to go to the jury.

“*Judge.*—Gemmen of the jury, you have heard such of the facts of this distressing case as are capable of being conveyed to your knowledge. Gemmen, the criminal law of this country draws a happy distinction between assumed guilt and guilt actually proved. In Hawkins’s ‘Pleas of the Crown,’ you will find all this laid down much better than I can explain it to you. Gemmen, I shall not detain you with any further observations, but I leave the case in your hands, with this simple observation, that if you have any doubt, you must give the benefit of that doubt to the prisoner.

“*The Jury* (laughing amongst themselves).—Of course we must let him off, as we heard nothing against him.

“*Foreman of the Jury.*—We find the prisoner not guilty.

“*Judge.*—Prisoner at the bar, you have had a very narrow escape. If we see you here again you will be most certainly transported—you belong, I believe, to a bad lot. Discharge the prisoner.”¹

The learned judge, on reading this account of the trial, which was penned by a witty barrister of that day, was, we are told, deeply offended, and never forgave the writer. Beyond all doubt there was a trial, which trial was a mockery of justice, the judge having frequently in the course of the case addressed the County of Mayo jury as “Gemmen of the Grand Jury of the County of Galway”—but it is quite another thing to say that, with all its absurdities, he could have presented the grotesque features of this caricature.

A.D. 1830.—At the Summer Assizes of this year was tried a case of wilful murder committed a quarter of a century previously. The facts are these: The country, at the close of the year 1806, was sorely distracted by the continual disputes between the landlords and their tenants, and between the tithe-owners and the tithe-payers. Secret societies called *Threshers* arose, vengeance was wreaked on the hay-yards of such gentlemen or middle men as excited the wrath or suspicions of the brotherhood of this secret society; and frequently, where at evening had been seen a large and well-filled haggard, nought was visible in the morning but

¹ MS. “Note Book of a Western Barrister.”

empty space, the wasted grain and the valuable hay being scattered over the adjacent fields and roads often to a considerable distance.

Tyrawley, the northern barony of Mayo, was, at this period, infested with a gang of *Threshers* of peculiar daring and activity, the most prominent of whom was Murtagh Lavan, usually termed "Murty the Shaker," a sobriquet which he derived from his remarkable dexterity in scattering the contents of the various hay-yards, and, for a considerable period, this reckless gang was a terror to the entire barony. But there is fortunately neither union nor faith amongst the wicked.

After having been the principal in numberless acts of destruction and lawlessness, Murtagh became a private informer, and was equally useful to the Government whether the accused were guilty or innocent; and he accordingly received very large rewards for bringing many to the gallows, when his career was cut short by a violent death. That he had turned informer was privately known; and in consequence of this private knowledge, a band of his former accomplices planned and accomplished his murder in a singularly daring way. It appeared that he went one evening, accompanied by his wife, to a christening. He had not been very long there when he was called out; she followed him, and in her presence he was assailed by a number of blackened and armed men, one of whom felled him with a hatchet like an ox in the slaughter-house. He was never allowed to rise, for the others trampled upon him when down, and struck him with various weapons. The wretched woman (his wife) fled into a corner, an unharmed spectatress of the whole murderous scene, and, what has rarely occurred under similar occurrences, without making any attempt to fling herself between her husband and the murderers.

Immediately on information being forwarded to the Government of the audacious murder of the informer, proclamations offering large rewards for the discovery and conviction of the perpetrators were issued. Five of the murderers were apprehended, tried on the Connaught Circuit, found guilty, and executed in 1806. One of them named M'Ginty fled to England immediately after the commission of the crime, and returned to this country in 1810, and on the very night of his return was apprehended, sent to the jail of

Castlebar, and, in the Spring Assizes of 1811, was put upon his trial. Mr. French and Mr. Daniel appeared for the Crown, and Mr. Guthrie for the prisoner.

A curious point was saved in this man's favour after conviction, when an arrest of judgment was moved for on the ground that the principal witness against him was a felon, who himself, after having been tried, was sentenced to capital punishment, and therefore was *civiliter mortuus*, dead in law, and being dead could not be received as a competent witness. The objection was, however, overruled by the judges in Dublin, on the ground that the witness had received a pardon, and could be, therefore, considered a living witness again. The death of the wretched prisoner was a dreadful one, for he fought for his life for an hour before he was flung into eternity, and he died denouncing vengeance against his betrayers.

Four-and-twenty years after the murder of Murtagh Lavan—it was in the spring of 1830—a woman was making her way across a stream running through a gentleman's grounds in the County Sligo, when she was prevented by a caretaker, whose name was Cuffe, who obliged her to turn back.

“Musha, bad luck to you then,” with bitter earnestness, exclaimed the woman; “thank God, you can't murther me as you did Murtagh Lavan, long ago.”

Her words were heard by a policeman, who happened to be angling just then in the stream, and who promptly brought her into the presence of a magistrate, where, after the policeman had stated what he had heard, she attempted to retract her words. But the magistrate was not to be trifled with; for he gravely informed her that she would be punished unless she told all she knew.

Overcome with fear, she said that she knew the caretaker Cuffe, and saw him on the day of the murder of the informer Murtagh Lavan. Cuffe was immediately committed to stand his trial at the approaching assizes. The Grand Jury found a true bill against him, and he was put upon his trial before Mr. Justice Vandeleur. The widow of the murdered man identified him, and swore that she had seen him whirl the hatchet around his head, and with one deadly cut drive it into the head of the man, who was dead in a

moment. The other woman was next sworn, and gave her evidence unhesitatingly. Without turning in the box, the jury found the prisoner guilty of the wilful murder of Murtagh Lavan in the year 1806.

His execution followed soon after, and his death was mourned by many men who thought that, after four-and-twenty years, his crime might be forgotten ; and they said, too, that Murtagh Lavan was a low informer, and had richly deserved his fate.

A.D. 1832.—On the roll of the Connaught Bar Society is inscribed in this year, for the first time, the name of one who has since won imperishable fame as an orator, the Right Honourable James Whiteside, afterwards Lord Chief Justice of Ireland. Born in the County of Wicklow in 1806, he was the son of the late Rev. William Whiteside. Entering Trinity College, Dublin, in early youth, he had a distinguished collegiate career ; was called to the bar in 1830, went probation on the Connaught Circuit in 1831, and was proposed in 1832 by George French, Esq., K.C., and seconded by James Henry Blake, Esq., K.C., a Catholic lawyer of great eminence. As Mr. Whiteside remained only two years on our Circuit, which he left the year of his marriage with Miss Rosetta Napier, sister to the Right Honourable Joseph Napier, late Lord High Chancellor of Ireland, to join the north-east bar, his history is bound up chiefly with the latter, and we might therefore, if such were our wish to do, leave the memoir of his public life to some future writer on that Circuit, on which, in great part, he won renown. But James Whiteside was one of these men from whom we do not wish to part. The fame he achieved is the heritage of Ireland ; and though he remained amongst the Connaught bar for a short time, still may not we be allowed to claim some part in one who, for a little while, was on the Circuit ? And if, as the poet tells us—

“Bright names will hallow song,”

then, too, assuredly, “bright names will hallow story, and his was the brightest !” And so we shall keep a place for him amongst the men who have shed renown on the Connaught bar.

In 1842 he was called to the Inner Bar, and in 1844 was leading counsel for Charles Gavan Duffy in the State Trials of that

memorable year, when the Repeal agitators, O'Connell, his son John, Thomas Mathew Ray, Dr. Gray, and Richard Barrett, were prosecuted by the Government of Sir Robert Peel. Many incidents of a sensational character enlivened the progress of that trial. One would have thought that so late as 1844 duelling was dead and gone. Nevertheless, and it is a matter of history, that the Right Hon. Thomas Berry Cusack Smith, then actually Attorney-General for Ireland, flung a murderous challenge across the table to Gerald FitzGibbon, Esq., q.c., counsel for one of the traversers, and a distinguished member of the Connaught Circuit. This was the last attempt, and by the first law officer of the Crown, to revive the barbarous custom of duelling at the Irish bar.

It was on this eventful occasion that Mr. Whiteside delivered the eloquent and powerful oration which placed him foremost amongst the orators of his country.

The acclamations with which his speech was received were almost unprecedented in a court of justice. His eloquence, his passion, his fervent appeal, had so electrified his hearers that, whether they sympathised with the traversers or with the Government, they were borne away by an irresistible impulse in admiration of the man whose great and natural abilities were on this occasion so prominently displayed.

In the very commencement of those trials, there was what is called a challenge to the array, because a portion of the jury list, containing twenty-three Catholic names, had been abstracted from the custody of the sheriff before the trial had commenced. The challenge was overruled by the Irish Bench; but the circumstances formed a principal portion of the grounds upon which an appeal was taken to the House of Lords, with a view to set aside the verdict, which was against Mr. O'Connell and others, the accused. The House of Lords gave judgment, and that House, to their immortal credit be it spoken, reversed the judgment of the Irish Queen's Bench. It was on the 4th of September, 1844, that the question was debated before the Law Lords, the Lord Chancellor (Lord Lyndhurst), Lord Brougham, Lord Cottenham, Lord Campbell, and Lord Denman. Lord Lyndhurst, the Tory Chancellor, and Lord Brougham, the ex-Whig Chancellor, delivered their judgments, that the judgment of the Irish Queen's Bench do stand;

whilst Lord Cottenham, Lord Campbell, and Lord Denman were for its reversal. "My lords," observed Lord Denman, "if this be trial by jury, then trial by jury becomes a mockery, a delusion, and a snare."

The Lord Chancellor, the House of Lords being then full of Lay Lords, inquired whether it was the pleasure of their lordships that the decision of the Court below should be affirmed. The overwhelming majority were in favour of the judgment remaining undisturbed. Lord Wharncliffe, President of the Council, amid a scene of the greatest excitement, then addressed their lordships, imploring of the lords unlearned in the law not to interfere in the matter, "and to leave the case in the hands of the Law Lords, who in fact constitute the Court of Appeal. If noble lords," he said, "unlearned in the law, should presume to decide questions of law by their votes, he very much feared that the authority of the House as a Court of Justice must be greatly impaired."

Lord Brougham, "deeply lamenting the decision of the majority of the Law Lords, concurred with what had fallen from the President of the Council."

Lord Campbell.—"With reference to what has been said of the distinction between the *Law Lords* and *Lay Lords*, and leaving the decision with the Law Lords, it is unnecessary for me to say more than that the distinction is unknown to the Constitution, and that there is no distinct order of Law Lords in the formation of your lordships' house. But there is a distinction in reason and the fitness of things between members of a Court who have heard a case argued, and members of that Court who have not heard it argued; and those only who have heard the arguments should take part in the decision. I believe that none but those that are called the Law Lords have constantly attended while the case has been debated at your lordships' bar."

The Lord Chancellor.—"Be it remembered that his lordship actually formed a part of the Government who were for maintaining the judgment of the Court below; but he was Lord High Chancellor of England, and did not forget his duty)—"I think those noble lords who have not heard the arguments will decline voting if I put the question again."

The Marquis of Clanricarde.—"My lords, I think it right to

say if any noble lord, not learned in the law, who has not heard the whole argument, votes in addition to the Law Lords on this question, I shall, as a matter of privilege, think it my duty also to give my vote. In stating that intention, I must also state that I should be very sorry to be reduced to that necessity; for I should look on the course of proceeding which would oblige me so to act to be one of the most calamitous nature to the House and the country. I think it infinitely better that all those noble lords who are not in the common acceptation of the term 'Law Lords,' should leave the House."

All the Lay Lords then withdrew, and the judgment was reversed.

Business flowed in too rapidly upon Mr. Whiteside. His health gave way, and for two years he was obliged to seek the repose of a southern climate. In Italy his active mind was employed in the production of a book entitled "*Italy in the Nineteenth Century*." In that book one cannot fail to observe, how in the richness of his mind he found a beauty in those services whose compositions would appear to us to have had a celestial rather than a terrestrial origin. "The music," writing of the Tenebræ at which he assisted in the Sistine Chapel, "a masterpiece of composition to which the Lamentations were chanted, was the most thrilling to which mortal ear can listen. The harmonious cadences were sometimes so mournful as to make the hearers weep. So forcibly were my feelings affected, that I forgot fatigue, and I was enabled to stand three hours listening to sounds which at times resembled more the wailing of spirits than terrestrial music. At certain stages of the service a priest, with noiseless step, moved towards the frame upon which the lights were placed, and slowly extinguished one. It was strange that an act so simple should arrest the mind; yet, as the service proceeded, I watched the process with anxiety intense, and when the last taper was extinguished, I comprehended the idea intended to be conveyed, that now the light of the world was extinguished."¹

Returning to the bar in 1848, he was counsel for William Smith O'Brien and his fellow-conspirators in that year. In the month of

¹ Whiteside's "*Italy*," Vol. iii., p. 249.

August, 1851, he was returned to the House of Commons as Member for Enniskillen, which borough he continued to represent until the month of April, 1859, when he was elected one of the Members for the University of Dublin. He was Solicitor-General for Ireland in Lord Derby's first administration in 1852, Attorney-General in Lord Derby's second administration in 1858-59, when he was sworn a member of the Privy Council in Ireland. He frequently came special counsel on the Connaught Circuit in those years, and was invariably both pleasing and pleased. His speeches were eloquent, and they were telling; but the most effective was in the case of *Thelwall v. Yelverton*, delivered in the Court of Common Pleas in Dublin in 1861. The action was to try the validity of the marriage of the Hon. Major Yelverton with Miss Theresa Longworth, who was the daughter of an English merchant. She had a brother who was Her Britannic Majesty's Consul in Turkey. During the Crimean campaign she made the acquaintance of Major Yelverton, an Officer of the Royal Artillery at Constantinople. She visited the Crimea as the guest of Major-General and Mrs. Straubenzie, at whose residence she renewed her acquaintance with the defendant. A correspondence between the parties followed. Major Yelverton and she met afterwards at various places in Scotland, in England, and in France, and, according to her statement, an engagement was entered into in the first-named country, which, according to the law of that country, constituted a valid marriage. But this not satisfying her conscience, they agreed to visit Ireland, in order to celebrate a marriage which would satisfy her conscientious scruples.

The parties journeyed together to Rostrevor, where a priest performed a ceremony, which was void as a marriage if Major Yelverton were a Protestant. He insisted he was; she insisted he was not. The questions the jury had to try were: 1st. Was there a valid marriage performed in Scotland? 2ndly. Was there a valid marriage performed in Ireland? The counsel for the plaintiff were Sergeant Sullivan, late Lord Chancellor of Ireland; the Right Hon. James Whiteside, Q.C., M.P.; Francis MacDonough, Esq., Q.C., M.P.; John F. Townsend, Esq., LL.D.¹

¹ Now Judge of the Admiralty Court.

Counsel for defendant: The Right Hon. Abraham Brewster, q.c. (afterwards Lord Chancellor of Ireland); Sergeant Armstrong, q.c.; John Thomas Ball, q.c. (since Lord Chancellor of Ireland); and H. P. Jellett, q.c., LL.D.

Sergeant Sullivan stated the case. His speech awakened the sympathies of the world in favour of his client, the unhappy and unfortunate Theresa Longworth. On the ninth day Mr. Whiteside rose, and never did his commanding presence look to more advantage than on that evening. He had spoken for five hours, and thus concluded: "How stands the question now that the whole of this great trial is before you? Now that you have all the facts; and I cannot dwell at this hour minutely upon each particular circumstance as I might have done, if I had gained you at an earlier hour of the day, in endeavouring to reason it step by step. I ask you to judge of that woman as she appeared before you, and then say do you believe her. Ask yourselves, what fact has been proved against her with any living man, save the defendant? Her crime is that she loved him too dearly and too well. Had she possessed millions, she would have flung them at his feet. Had she a throne to bestow, she would have placed him upon that throne. She gave him the kingdom of her heart, and made him the sovereign of her affections. There he reigned with undisputed sway. Great the gift! Our affections were by the Almighty hand planted in the human heart. They have survived the Fall, and repaired the ravages of sin and death. They dignify, exalt, and inspire our existence here below, which without them were cold, monotonous, and dull. They unite heart to heart by adamantine links. Nor are their uses limited to this life. We may well believe that when the mysterious union between soul and body is dissolved, the high affections of our nature, purified, spiritualized, and immortalized, may add to the felicity unspeakable reserved for the spirits of the just made perfect through the countless ages of eternity. She gave him her affections; she gave him her love—a woman's love! Who can describe its devotion? If he had taken that woman for his wife, misery would have endeared him to her, poverty she would have shared, from sickness and misfortune she never would have fled; she would have been his constant companion, his guide, his friend—his polluted mis-

tress never ! Therefore I now call upon you to do justice to that injured woman. You cannot restore her to the husband she adored, or to the happiness she enjoyed. You cannot give colour to that faded cheek, nor lustre to the eye that has been dimmed with many a tear. You cannot relieve the sorrows of her bursting heart. But you may restore her to her place in society. You may by your verdict enable her to say, ‘ Rash I have been ; indiscreet I may have been through excess of affection for you, but guilty never ! ’ You may replace her in the rank she would never disgrace ; you may restore her to that society in which she is qualified to shine, and has ever adorned. To you I commit this great cause. I am not able longer to address you. Would to God that I had talents or physical energy to exert either or both longer on the part of this injured, insulted woman. She finds an advocate in you—she finds it in the respected judge on the Bench—she finds it in every heart that beats within this court, and in every honest man throughout the country.”

Chief Justice Monahan, on the next day, charged the jury, and that charge has been ranked amongst the best, the most remarkable, of the charges of our judges. Of the future progress of that great case, after it passed out of the Irish Courts, we are not about to discuss. The jury retired, and, after the space of an hour, returned into Court. Their coming was awaited with intense excitement by a densely crowded Court.

“ How say you, gentlemen ? ” said the Chief Justice ’ mid a profound silence. “ Have you agreed to your verdict ? ”

The Foreman replied that they had. “ We find that there was a Scotch marriage, and we also find that there was an Irish marriage.”

The Chief Justice.—“ Then you find that the defendant was a Roman Catholic at the time of their marriage ? ”

The Foreman said that that was their belief.

Before the Foreman had spoken the last of his words—which gave the plaintiff an unqualified verdict—the silence was broken by an uproarious vociferation, which the multitudes in the hall took up ; on it passed to the quays where knots of people were discussing the case : but when Mr. Whiteside issued from the Court, it appeared as if men had lost their reason. Loud and prolonged and

uproarious was the cheering; it appeared as if they could have fallen down at his feet and adored him.

Mr. Whiteside was reappointed Attorney-General for Ireland in Lord Derby's third administration in July, 1865, and was soon after made Lord Chief Justice of Ireland. In addition to his "*Italy in the Nineteenth Century*," he has written other works—"Vicissitudes of the Eternal City," published in 1859; "*Life and Death of the Irish Parliament*," in 1863; and "*Church in Ireland*," published in 1865. Failing health induced him in 1876 to try the balmy air of the south of England; but "his wine of life was on the lees," and he died on Saturday, the 25th of November, 1876. On the following Monday the judges in all the Courts spoke feelingly of the illustrious dead, and then adjourned in respect to his memory. The Hon. James O'Brien, senior of the Justices of the Queen's Bench, announced the adjournment of the Court in consequence of the lamented decease of the distinguished Chief Justice, "who for many years had occupied so distinguished a position before the public, and whose unrivalled genius was the ornament of the profession to which he belonged." Yes, his abilities were an ornament of that profession to which he was unalterably attached, and, recalling his courtesy, and his uniform solicitude for the privileges and dignity of the bar, its members had reason to lament his loss.

MR. JOHN H. PLUNKETT.

The Connaught Bar Society, while wishing every happiness to one of their number, Mr. John H. Plunkett, who had been appointed Solicitor-General for New South Wales, were selfish enough to regret that their evenings would no longer be gladdened by his ceaseless anecdote and learning. In 1831 he had given notice of a motion to abolish the ballot on circuit; but before the next meeting he had left for another hemisphere.

Mr. Scott, K.C., had also some beneficent notices to bring before the bar in this year, one of which, preventing card-playing after twelve o'clock on Saturday night, was carried. Mr. Scott, who was in good practice on the Circuit, was an extremely prosy, long-winded speaker. It is related that on one occasion he and Mr. Robert Holmes were engaged as counsel in a case at hearing in the

Court of Exchequer. Mr. Scott, as usual, spoke with lengthened zeal, and for three long hours. On resuming his seat, the Barons informed him that the case should stand for judgment. Meanwhile the Court of King's Bench was at a stand-still, waiting for Mr. Scott to come in; at last he and Mr. Holmes made their appearance. "Mr. Scott," said the Chief Justice, "we have been waiting for you: there are only two cases in our list; one I see you are in, and in the other Mr. Holmes; we shall be happy to hear you." "Well, my lords," replied Mr. Scott, "I must ask the indulgence of the Court, as I am physically unable to go on until I get some refreshment. I am tired to death, my lords, having spoken for three hours in another Court." The Chief Justice said, "Of course; and no inconvenience can arise, inasmuch as I see Mr. Holmes, who can now proceed with his motion." Mr. Scott, having thanked their lordships, withdrew. "Now, Mr. Holmes." "Ah! my lord," said Mr. Holmes, "I also have to claim the indulgence of the Court, as I, too, am physically unable to go on until I get some refreshment. I am tired to death, my lords, having been in the Exchequer during a great part of the day." "But, Mr. Holmes, you were not speaking: Mr. Scott has been speaking for three hours; what has tired you?" "Ah! listening to Mr. Scott, my lord." "Capital," exclaimed the Chief Justice.

A.D. 1833.—The legal education of a barrister was regarded in the early half of the present century as incomplete unless he had studied at chambers in England. There the previously acquired science of law, in its multifarious branches, was utilized by its application to the multitude of cases which crowded before the student in chamber. Well, in those times there were two eminent personages at the English bar, with whom Connaught Circuit men had mostly read—Anthony Richard Blake, better known as "Blake the Remembrancer," and Andrew Harry Lynch, Master in Chancery, and at the same time M.P. for Galway. And now about those Anglo-Connaught lawyers.

Anthony Richard Blake was a shrewd and ingenious person, whose history is not a little singular. A younger son of a respectable house, his first essay in life was as a militia officer. His mind was active; and though without the advantage of regular service in the line, he soon acquired so much skill and knowledge as to

become adjutant to the regiment. Upon the exchange of militias, Mr. Blake went to England, where the troops committed to his instructions were soon distinguished by their superiority over the rest of those pacific levies. With the good luck of many of his countrymen, he formed a useful and happy matrimonial alliance, and was impelled by his new connexions, and by a consciousness of ability, to go to the bar. Yet he knew that he had few qualifications necessary for distinction as an advocate, and he therefore, immediately after his call to the English bar, chose the less brilliant but more certain path of equity pleading. Professing the Roman Catholic religion, he engaged in the transactions of the London board of noblemen and gentlemen of that persuasion, who were associated for the attainment of their civil rights. In this body he soon gained an ascendancy, and became intimate with the chief Catholics of England, and by them was employed, in his professional capacity, in the management of their affairs. Many of the solicitors who had thus employed Mr. Blake had likewise Protestant clients, on whose behalf they used to consult him. In this way he was introduced to the Marquis of Wellesley, who formed the highest opinion of his abilities. The Marchioness of Wellesley being a Catholic, may have influenced the Marquis in having his advice on matters connected with his property. Being of elegant appearance, of boundless information, and of ceaseless anecdote, the Catholic lawyer became intimate at the houses of many a noble family ; so that Lord Eldon could not but approve of the prosperous associate of the nobles of the land. In Ireland, however, save by some members of the bar, and by his County of Galway friends, he was unknown ; so that much astonishment was created when, at the close of 1821, the approaching arrival of the Marquis of Wellesley, with his friend and counsel, Mr. Blake, was announced. It was soon ascertained that Blake was amongst the dispensers of fortune. Mr. Saurin was at that time, and had been for fourteen years, since 1807, Attorney-General, and principal of the Executive in Ireland ; but Saurin's anti-Catholic prejudices were distasteful to Mr. Blake, to whom marked civilities were paid by the great Catholic champion, William Conyngham Plunket. That Blake was a prime mover of the Irish Government quickly became apparent by a trivial circumstance. Lord Wellesley was, soon after his arrival, invited by the

Corporation of Dublin to a public dinner. Mr. Blake was amongst the guests ; and as such, having come over with the Marquis, his health was proposed. Before the learned gentleman could say a word, the Lord Lieutenant started up to return thanks on his behalf. This excited universal astonishment ; but Mr. Blake interposing, expressed his gratitude himself. Each succeeding day showed that the tendency of the government was in favour of the Catholics. Mr. Saurin was dismissed from the Attorney-Generalship, to which Mr. Plunket was, in the opening of 1822, appointed. Mr. Blake, though the dispenser of favours to the bar, was himself, until the Catholic Emancipation Act of 1829, inadmissible to the Bench ; but on the first opportunity, he was in 1823 made Chief Remembrancer of the Court of Exchequer, which then had an equitable jurisdiction.

As the office of Chief Remembrancer has been long since abolished, a word on that office and duties may not be out of place. He was the principal officer of the Court. In his office, all bonds for the king's debts, for appearances, and for observing orders, were entered or lodged ; and he made out all the necessary reports thereon. All informations upon penal statutes, and upon forfeitures, and escheats, either at law or in equity, all inquisitions on commissions out of the Court to find out the King's title to any land forfeited or escheated to the Crown (especially to those which were forfeited by the *rebellions* of 1641 and 1688), as also several of the proceedings upon the acts of settlement and explanation, were filed in his office. His duties, and they were numerous, are contained at length in Howard's "Revenue Exchequer." The processes out of this office, quaint and amusing, are worthy of a remembrance. Thus "the Summonster's Process :—" "George III., &c., to the Sheriff of our County of Leitrim, greeting :—As you love yourself, and all that is yours, see that you have at our exchequer in Ireland, on the morrow of All Souls, next coming, all the underwritten debts, that is to say, fines and amerciaments imposed, and recognizances forfeited, at a general assize, held for the said county, the 26th September, 1772. Dated at the King's Courts, Dublin, the 18th day of June in the thirteenth year of our reign."

The "Process of the roll of the Pipe," out of the Chief

Remembrancer's Office, was nearly similar.¹ "George III., &c. to the Sheriff of the County of Sligo, greeting—Take care as you love yourself, and all belonging to you, that you be and appear before the Treasurer and Barons of the Exchequer, at the King's Courts, Dublin, on the Feast of Saint Michael the Archangel, next coming, and that you have with you whatsoever to us is due of all debts underwritten."²

This office of Chief Remembrancer was filled by Anthony Richard Blake for many years, and he was an indefatigable labourer in the public service. Several important local improvements are due to his industry, learning, and sagacity; but he was chiefly conspicuous as a Commissioner of National Education, in the administration of which system he took a leading part. He was also a commissioner of charitable donations and bequests, and was a Privy Councillor. His prosperous career was terminated prematurely by his death in 1849.³

Andrew Harry Lynch, also a Galway man, was called to the English bar, where he became a leading equity lawyer. He represented his native town, Galway, for many years, even after he became Master in Chancery in England, for the Act of Parliament then excluding the judges from the House of Commons, did not exclude the Masters. His chambers had several students from Connaught, amongst the most remarkable of whom was James Henry Blake, Esq., q.c. Mr. Malachy Fallon, a member of the Connaught Bar Society from 1827 to 1838, and afterwards assistant barrister for the County Limerick, was an assiduous student in Mr. Lynch's chambers; so also was Mr. Henry Baldwin, q.c., member of the Connaught Bar Society from 1827 to 1850. These and many others of the Circuit acquired their practical knowledge of pleading and conveyancing in the respective chambers of their learned countrymen, Messrs. Blake and Lynch.⁴

Mr. Baldwin was for years in good, we might say in leading,

¹ The Pipe Roll was the Exchequer Roll, also called "The Great Roll of the Pipe."

² Howard's "Revenue Exchequer," Vol. ii., p. 279.

³ Sheil's "Sketches of the Irish Bar," Vol. i., p. 123, n., 192, 368.

⁴ "The Irish Bar," by Roderick J. O'Flanagan, p. 98.

practice on the Circuit. His father was a captain in a regiment of the line, and his mother a member of a very old Catholic family in the County of Dublin, the Segraves of Cabra, now denominated of Kiltymon, in County Wicklow. Her sister, Miss Clorinda Segrave, was married to Mr. Lynch, of Barna, in the County of Galway, and in this way Mr. Baldwin had a connexion on the Connaught Circuit. Of delicate frame, he had a heart overflowing with kindness—a kindness which nearly cost him his life in 1832. Enveloped in a heavy, furred muffling coat, he took his seat in the inside of the mail-coach on a night in March on his way to the Galway Assizes. The wind was cold, cutting, and bitter. Alighting at one of the frequent stages, he observed, on the outside, a passenger without a muffling coat coughing, and almost perishing with cold. Baldwin offered him his coat; the one refused, the other insisted; but the outside passenger at length was constrained to put on the coat, saying, “This good act, counsellor, will be before you in another world.” The bugle sounded “All right;” and in a few moments the four-in-hand was on its way to Galway. Shivering, Baldwin now suffered from what he had done. His briefs were all returned, the fees sent back, and he was soon in a raging fever at the hospitable house of his cousin and future brother-in-law, Mr. Nicholas Lynch, of Barna, D.L., both being afterwards married to sisters, the daughters of Stephan Grehan, Esq., of Rutland Square, in the city of Dublin. At Barna he recovered slowly and steadily. His name subsequently appears in many cases on circuit, but perhaps the most remarkable of the trials in which he was engaged was that of the Right Rev. Dr. O’Finan, Catholic Bishop of Killala, of which we shall hereafter speak. In 1840 he was counsel for the plaintiff in an action tried in Galway for breach of promise of marriage, when a Mr. O’Flanagan was defendant, and where the jury gave heavy damages against him for “breathing vows, but ne’er a true one!”

Mr. Baldwin, of a weakly, delicate frame, was again taken ill at the Summer Assizes for the County of Galway, in 1844. He had spoken to evidence in a crowded court, and the strain on his lungs was too great. Rest from the toils of circuit would at the time have been most acceptable to him, and that rest was almost within his reach in 1846, when his party came into power, on the

overthrow of the Government of Sir Robert Peel. In the movement that took place, Chief Baron Brady became Chancellor, Mr. Pigott, q.c., Chief Baron, James Henry Monahan, q.c., of our circuit, became Attorney-General, Mr. Hatchell Solicitor-General, and the Mastership in Chancery, vacant by the death of Master Goold, remained to be filled. The Earl of Bessborough, Lord Lieutenant, offered the post to Mr. Baldwin: but Mr. O'Connell was a factor in the equation who could not by any means be eliminated; and he demanded and obtained the place for Jeremiah John Murphy, Esq., q.c., of the Munster Circuit. The following is Mr. Baldwin's account of the transaction which deprived him of a place in every way suited to his tastes:—

“The more I learn of the affair, the more I lament the accident that led to the result. The Lord Lieutenant wrote to Redington to say that my appointment was actually made. O'Connell's statement is, that he, as father of the Catholic bar, called on the Lord Lieutenant and demanded the situation for a Roman Catholic. The Lord Lieutenant told him that it was arranged that a person of that persuasion should have it. O'Connell then asked it for Murphy. The Lord Lieutenant said he was too late, as I was appointed, and the letter to notify it to the Chancellor was written and on the table. O'Connell, finding it was not posted, and consequently that no official communication had been made, insisted that it was within the control of the Government, and asked it as a personal compliment to himself. To this they yielded. My appointment superseded—Murphy substituted for me.”¹

The appointment of Master Murphy closed for a season the avenue to promotion; and again in 1850, when the death of Chief Justice Doherty, who for twenty years had presided in the Court of Common Pleas, caused another series of changes, he was still passed over; but in the same year a place of all others unsuited to his tastes was offered to him, that of “Commissioner of the Insolvent Court.” He accepted it nevertheless at a salary of £2,000 a-year, and, as a matter of course, resigned his office of Assistant Barrister of Cork, which for years he had held.

The several appointments made by Lord John Russell during

¹ “Irish Bar,” by Roderick J. O'Flanagan, Esq., B.L., p. 279.

the four years he had now been in power, were undoubtedly of the best men the Irish bar could boast of. Nevertheless there appeared, from the pen of some scurrilous anonymous disappointed pamphleteer, a pamphlet entitled “The Voice of the Bar,” censuring all that had been so appointed, but especially those that came from the Connaught Circuit. How undeserved the censure will be patent to all who read in the annals of that period the names of those promoted. Thirty-four years have since gone over; not one of the vilified men is living now. The pamphleteer is gone; all are gone; and so *cui bono* to disentomb a pamphlet which has long since lost its interest? The position of Commissioner of Insolvency, spite of its ample pay, was, as we have said, entirely unsuited to a mind like Mr. Baldwin’s. His health soon gave way, and on the 24th May, 1854, he breathed his last. Universal regret was felt on that sad occasion. His hearse was followed to the Metropolitan Church, Marlborough Street, by numerous mourning friends, amongst whom were his brethren of the bar who had travelled the Circuit with him.

Duelling was not yet dead on the Circuit. In 1836, Mr. Walker, K.C., fought his brother circuiteer, Mr. Casserly, at Sligo, on some question that arose in Court on Registry Appeals; and Mr. Baker, K.C., fought on the field of battle Mr. Richard Everard, commonly called “Dicky Demurrer;” for Mr. Baker, an extremely irritable man, could not brook the affront of Mr. Everard’s successfully demurring to pleadings that he (Mr. Baker) had signed. There was a Mr. Courtenay on the Circuit also, counsel to the Bank of Ireland; and he sent Mr. Everard a challenge to fight him in “the fifteen acres, be the same more or less,” for setting aside a score or so of his declarations.

A.D. 1837.—Great interest was excited in the early part of this year by a case about to be tried in Castlebar—a case where the Catholic clergy of a diocese revolted against their bishop—where churches were closed, priests suspended, episcopal authority set at nought—where altar was arrayed against altar, priest against priest, bishop against bishop. Immense was the speculation that prevailed in the English press on the coming revelations of the abominations of the Church of Rome. But alas, when the day of trial came—when troops of reporters from every quarter of the

empire with itching ears were there—there were no revelations! A comparatively prosy trial ensued. The case was that of *The Most Rev. Dr. O'Finan, R.C. Bishop of Killala*, v. *The Hon. Frederick Cavendish*, proprietor of the "Castlebar Telegraph," for the publication of a libellous letter accusing the plaintiff of having allowed his Cathedral Church to run to ruin; of being an Italian monk who was ignorant, or nearly so, of the English language; of being cruel, tyrannical, overbearing, and insulting to his priests; of being wholly unworthy of the high office he degraded; and of neither preaching to, nor associating with, his people. It added that he was an aristocrat himself, and had been guilty of associating with the aristocracy.

The case was tried at the Lent Assizes for the County of Sligo, before the Right Hon. Lewis Perrin, one of the Judges of the Queen's Bench.

The counsel for the Right Reverend plaintiff were John Beatty West, K.C., James Henry Blake, K.C., Mathew Baker, and Richard Everard.

Counsel for the defendant—Richard Keatinge, K.C., Edward Scott, K.C., William Armstrong, and Henry Baldwin.

Mr. Everard opened the pleadings, and Mr. James Henry Blake, K.C., stated the case.

It appeared, from his statement, that in 1824, Dr. Waldron, Bishop of Killala, being then aged, applied to the Court of Rome for a coadjutor; his application was granted, and the Rev. John MacHale was appointed as such, and so continued for ten years, until April, 1834, in which month he became Bishop thereof, and so continued for two months, when he was raised to the Archbishopric of Tuam. Killala then became vacant, and three names were selected for the office of bishop; these were the Rev. Messrs. Flannelly, Costello, and Dr. O'Finan. Dr. O'Finan was elected; that election was confirmed by the See of Rome, and he was consecrated at Rome in the month of March, 1835. It was not without reason that the clergymen of Killala diocese selected Dr. O'Finan. He was personally unknown to every one of the clergymen of the diocese of Killala who gave him their votes; but he was perfectly known to all as a man distinguished for talents and learning. As early

as 1792, being then twenty years of age, he went to Rome for the purpose of receiving the best education to fit him for the ministry in which his life was to be spent; and for three years he studied in the College of St. Clement's, where he excelled as a man of talent. In 1795 he went to the Madelena, celebrated as a theological seminary, where he remained for two years. In 1797 he became a member of the Neapolitan College, and read during five years the course necessary for a minister of the Christian religion. In 1802 he returned to Rome, and was appointed Syndic, something like Bursar in our colleges. He filled that responsible situation in the College of St. Clement's, where he passed his noviciate; but in some time after he was transferred to Lisbon, for it is a principle in the Dominican Order, to which he belonged, that its members may be sent to any place where their services are required. He was appointed Professor of Theology in the Irish College in that city, and discharged the duties of his office so as to merit universal approbation. In 1805 he returned to Ireland, being sent to Waterford, where during seven years he acted as Professor of Theology in the episcopal seminary newly established in that city.

In 1812 he was appointed Professor of the College of Corpo Santo in Lisbon, and retained his professorship until 1816, when he returned to Rome, and was appointed Prior in his old Church of St. Clement's.

Dr. O'Finan remained at Rome until the year 1824, so much respected that, though then advanced in life, he was selected to be the Preceptor and Confessor of the Grand Duchess of Lucca, sister to the Empress of Germany. He spent seven years at her Court, and enjoyed there the society of the most distinguished characters in Europe. Dr. O'Finan returned to Rome in 1831, and was appointed Companion to the General of the Dominican Order, an office next in rank to the head of the Order; in fact, unless he were appointed to the head of the Order, he could attain no greater object of ambition. Here he remained until the year 1835, when he abandoned Rome, and valued friends, and elevated society, to settle himself as Bishop of Killala.

He accepted the office of bishop, and came to Ireland, not at his own solicitation, but at the solicitation of the majority of the

parish priests in that diocese; but he found even before he had left Rome that cabals were at work to counteract his promotion. He that was recommended to-day by the voice of the clergymen of the diocese was pronounced by them unfit to-morrow. It was insinuated that he was too old to be made a bishop, and that he must have forgotten the language, as if all this were not equally known before to the clergymen who selected him.

On the 16th of October he arrived in Ballina; that was on Friday, and on the Tuesday following he was waited on by thirteen of the clergymen who had elected him; and they demanded that he should make an alteration in the revenues of the diocese. They required an alteration in the marriage fees, from which he derived his chief support as bishop. With respect to the fees of marriage, called banns money, they said Doctor O'Finan should place it on the same scale as in other dioceses. In some dioceses the bishop receives one-half, and in others one-fourth, of the marriage money. With respect to those questions, he told them in the first place that he was not yet a week in the diocese, and could not give them an answer at that moment; that as bishop of the diocese he had no power to make any alteration in the marriage fees, because it was perfectly well known that he could not make any alteration to the amount of one farthing in the episcopal revenues, as that is a right most scrupulously and jealously restricted to the See of Rome; so that he could make no change for better or for worse. They appealed against Doctor O'Finan's verdict, to a provincial synod, of which Doctor MacHale was head, and he admitted the appeal.

Amongst the clergymen most forward in pressing these demands upon Doctor O'Finan, within one week after his arrival in the diocese, were the Rev. Messrs. Flannelly and Costello, competitors for the See of Killala, and the Rev. Mr. Barrett. When Doctor Waldron, as we have already told, was Bishop of Killala, Doctor MacHale was his Coadjutor Bishop. Bishops in the Catholic Church have what are called mensal parishes, given them for their support; and of those the bishops are in effect parish priests, so far as regards the revenues derived from them. In each diocese this parish is well known; but in the case of a Coadjutor Bishop he should have a different one, which is to all intents and purposes his mensal parish. By the canon law, when a bishop vacates a

See, the right of appointing to a mensal parish devolves on the See of Rome itself, and the bishop is deprived of all power in the matter. The parish of Crossmolina was the one belonging to Doctor MacHale as Coadjutor Bishop; and when, on the death of Doctor Waldron, that parish became vacant in consequence of the succession of Doctor MacHale to the See of Killala, the appointment rested accordingly solely with the See of Rome. By an oversight, Doctor MacHale appointed to this parish the Rev. John Barrett, an appointment which was *ipso facto* null and void. Then came the election of Doctor O'Finan to the diocese of Killala, an election made by parish priests alone; and at that election the vote of the Rev. Mr. Barrett was objected to by some of the clergymen. The question of his right to vote under these circumstances was referred to Doctor MacHale, even to him who had made the appointment objected to, and he, not being, perhaps, aware of the validity of the objection, decided the point in favour of Mr. Barrett, who accordingly voted at the election. Doctor MacHale, afterwards discovering his error, made application to get the appointment for Mr. Barrett to the parish of Crossmolina, and he was distinctly refused, for the Court of Rome, acting peremptorily in the matter, declined to establish such a precedent as it must have established by acceding to his request. All this occurred before Doctor O'Finan had ever heard a word on the subject. It was at Rome some friend acquainted him of the matter, and of the refusal which Doctor MacHale had met with; and he was also told that if he would apply to the sacred college, he would get the right of appointment. He did apply, therefore, for the right to appoint to the parish of Crossmolina, and the appointment was given to him. Mr. Barrett came with other clergymen to Doctor O'Finan, within a week after his arrival in the diocese, to make a demand for or to require an alteration in the marriage fees; and that being a matter confined to parish priests, Doctor O'Finan told Mr. Barrett that he had no right to be there, because he was not a parish priest.

Mr. Barrett said that he had been appointed by Doctor MacHale, upon which Doctor O'Finan produced the rescript from Rome, and conferred the parish on another priest, the Rev. Mr. Murray; and when that reverend gentleman went to take possession of the parish, he was resisted with violence, a tumult and a riot unfortunately taking place.

Doctor O'Finan, seeing himself set at defiance in that manner, suspended Mr. Barrett; upon which his partizans closed the chapel doors, and for several months there was not a clergyman to officiate in the parish of Crossmolina, as the one appointed to the parish by Doctor O'Finan was obstructed in the discharge of his duties by the people.

The next thing that occurred, which deepened the dislike of the clergy to the object of their choice, was the appointment he made of Vicar-General. Before the bishop had left Rome he was surrounded by several Irish clergymen, with whom he was acquainted in that city. Amongst them was Dean Burke. Being appointed to the bishopric of Killala, Doctor O'Finan was naturally desirous to receive every information relative to the diocese over which he was to preside, and to the persons with whom he was about to be connected. Accordingly he received from Dean Burke a most favourable account of the learning and talents of a clergyman named Lyons. Hearing this character from Dean Burke, Doctor O'Finan applied at Rome for the appointment as Dean of the diocese for Mr. Lyons, an appointment which rests exclusively with the See of Rome. On the bishop's arrival in Ireland, of course he saw Dean Lyons, and on becoming acquainted with him (being still more prepossessed in his favour), he appointed him his Vicar-General, an office in the gift of the bishop of the diocese. The Vicar-General is the substitute of the bishop himself, and it is the inherent right of the Bishop to appoint him.

Within one week after the arrival of Doctor O'Finan, the clergymen presented a protest against the appointment of Mr. Lyons as Vicar-General. In that protest they stated three reasons. The first was that the dignity of Dean had been acquired by intrigue. The next reasons were that Dean Lyons was litigious. This protest was referred to Doctor MacHale as Archbishop, in the nature of an appeal. His Grace accepted it, and despatched it to Rome. Doctor O'Finan, some time after, received a letter from Cardinal Franzoni, Prefect, and head of the College of the Propaganda, in which all matters relative to the Roman Church are regulated and decided. Now, it is only necessary to mention, respecting this letter, that it recommends Doctor O'Finan in strong terms to remove Dean Lyons from the Vicar-Generalship of the diocese, as it had been

reported at Rome that he was an unfit person for that office. Doctor O'Finan sent for him on the day after he received it, and put the letter into his hands, and he, immediately after he had read it, resigned the Vicar-Generalship. But Dean Lyons, having been Vicar-General of the diocese, and administrator of the mensal parish, had some matters to settle with Doctor O'Finan; next day all these arrangements were made, and thenceforward Dean Lyons ceased all connection with Doctor O'Finan as related to that situation. Before retiring he made one request, that his lordship would grant him leave of absence to go to Rome, for the purpose of setting himself right in the estimation of the sacred college. This request was granted. He went to Rome, and appearing before the Cardinal Prefect, demanded to know for what reason that letter had been written, and upon what grounds it had been recommended to remove him from the office of Vicar-General. The Cardinal was astonished at hearing the Dean speak in that manner, and said it was his own fault and that of his Bishop if he was removed from the office, as he had never commanded such removal; that the letter was a private, confidential communication, which Doctor O'Finan should not have disclosed even to the Dean himself. Dean Lyons said this was surprising, as the communication had been publicly known in Ballina ten days before, and he pressed to know by whose influence he had written the letter. This the Cardinal said was a point upon which the Dean had no right to insist; but he referred him for information on the subject to Monsignor Mai, who received him with much kindness, and made him acquainted with the charges brought against him. He then challenged an inquiry; and the result was that a letter was written by the Cardinal, not indeed withdrawing the former one, because that could not be considered as an official document, but declaring that the Dean had completely exonerated himself from the accusations of his enemies, and the degree of Doctor of Theology was conferred upon him. Dean Lyons, like his bishop, was a man of peace, and did not allow his chapel to be desecrated by being turned into a political arena, or used for any purpose not strictly religious. He had enjoyed the friendship of Doctor Kelly, the late Archbishop of Tuam, and had possessed the esteem of Doctor Waldron. The Bishop, Doctor O'Finan, was now attacked in the local papers, one

of which was the "Castlebar Telegraph." An election for the County of Mayo was then about to take place, and he told his clergymen that it would be more creditable to content themselves with recording their silent votes than by taking any active part in the election; and he implored of them, as ministers of God's word, to do nothing inconsistent with their characters as ministers of religion. That advice, unpalatable to the reverend gentlemen, was said to have been, in great part, the cause of the persecutions which this old and peaceable prelate experienced from his clergy; that advice was in the year 1834 sanctioned by every prelate of the Church in Ireland. There were two short resolutions agreed to by the Roman Catholic bishops in that year on this very subject; and amongst the signatures which are affixed thereto is that of Doctor MacHale. They were to the effect that the Roman Catholic chapels should not be used for any purposes except those devoted to charity and religion, and that the Roman Catholic clergymen should not interfere with the civil rights of their flocks, nor make any reference from their altars to political subjects, but confine themselves to the discharge of the duties of their office. They were also recommended not to connect themselves in anywise with political clubs, nor become secretaries thereof.

Mr. Keatinge, K.C., stated the case for the defence, which was a reiteration of the libel. The bishop's insolence to his clergy, counsel commented upon. The cathedral that Dr. MacHale had built was going to ruin. Sermons he preached not; and he set himself against all movements of a political nature, even for the removal of those disabilities left unremoved by the Act of 1829. Better suited was he to the courtier life of his day than to the rough and ready life of Bishop of Killala. Witnesses, mostly ecclesiastics, were examined on both sides. A verdict was found for the plaintiff, with damages £400. The clergy, or a great portion of them, now received their bishop and his pastorals with disdain: and Doctor O'Finan found, when too late, that the mitre is not without its trials; and he gladly returned to Rome, where in the shade, solitude, and repose of the priory, he resigned the episcopal office, and courted obscurity and happiness—a warning to others, who in wisdom of the wise are taught, in the words of the Pontifical, the words *Nolo episcopari*.

The correspondent of the *Times*, in chronicling the proceedings of that day, states that "an unpleasant disagreement took place in the bar-room of the Connaught Bar Society yesterday evening, when that learned body were, after dinner, at Radley's Hotel, Dublin. One of the barristers proposing the health of the Duke of Wellington, many drank with acclamation the toast, and many turned down their glasses. The unpleasant disagreement ended, however, happily."¹

On the following 17th of March, the bar were in Galway, it being the feast of our holy patron St. Patrick, when some kind-hearted barrister conceived the idea that he could not, on that blessed festival, and for the promotion of true harmony, do better than propose the health of the Duke of Wellington. Many at once sprung to their feet, vociferating and drinking to the Irish hero who, to use the words of the pacific proposer, "had saved England and conquered France." But many who sprang to their feet did so in anger, and to protest against the toast as a political one. One barrister there was a Counsellor Casserly, who steered a middle course; for while he would not stand up to do honour to the toast, yet would he drink to it sitting down, and not alone in one bumper, but in two; and he felt happy, and his happiness became patent to all men—a happiness that lasted far into the following day, when this counsellor in the Crown Court said, "I have to apply to your lordship in this case—yes, my lord, I have to apply to your lordship to direct the Grand Jury—to make a presentment in a malicious burning case for my client, whose name I am not in a position to state—something or other—'tisn't about the Trojan horse." "Mr. Casserly, what are the facts, and what is the motion about? We should like to hear a summary of what it is all about," inquired Mr. Justice Perrin. "Well, my lord, that is reasonable." Then collecting his ideas with a strong effort, he said, "This is the burning petition of a horse—my lord—and an ass, arising out of the same transaction—was burnt a month or so before—which clearly demonstrates the *animus* of the horse." "Eh!" exclaimed the judge, "say that again, till we make a conditional order." He

¹ "Times," 17th June, 1840.

did not, however, say it again, for his learned friend on the other side for the ratepayers thought, in the interests of the bar and of the public, that it would be as well to let the matter stand over until the next day, when the same counsel appearing, we have no doubt that it was disposed of in a manner more agreeable to the dictates of reason and equity than if it had on the previous occasion been disposed of off-hand.

CHARLES O'MALLEY.

There resided in Upper Temple Street, in the city of Dublin, in 1840 a gentleman, who had been a dashing cavalry officer. His name was Charles O'Malley, whose brother, P. O'Malley, Esq., Q.C., was a leading member of the English Bar. Both these gentlemen were sons of C. O'Malley, Esq., of the Lodge, near Castlebar. Charles was not a mere feather-bed soldier: he had fought in many a hard-fought fight; but the battle of Waterloo was followed by the stupid peace of 1815, which closed his happy and blood-stained avenue to promotion, and the warrior who expected other wars was constrained to hang up his armour, and retire in disgust from a service where glories were no longer to be won. Life was becoming to him a burden; he had no occupation for his thoughts. All about him was a peace painful to contemplate; and yet there were the wars of words at the assizes. There were the warriors of the bar, who went forth fearless to advocate their clients' cause; and in the war of words there was an excitement for the soldier; and that excitement was heightened by the high probability that in such a jarring conflict the counsel might be brought at any moment to an account for a real or imaginary insult which he inflicted, or was supposed to have inflicted, on his angry opponent. Charles O'Malley therefore resolved to go to the bar, and having, at great personal inconvenience, "eaten all his dinners" on both sides of the Channel, he was "called" in 1824, and in the same year went as probationer on the Connaught Circuit; and from that time forward he applied himself to the study of the law. His connexions in his native county soon obtained for him business, and assizes after assizes the voice of this irascible advocate might be heard in Court, brandishing his brief as if it were a sabre, as he spoke.

The anger of this easily angered gentleman was aroused when there appeared in the "Dublin University Magazine," in 1837, the first pages of a story entitled "Charles O'Malley, the Irish Dragoon." "Lever," writes Mr. William J. FitzPatrick,¹ "was so fond of giving real names to his characters, unlike Dickens, who evinced felicity in concocting his Verisophts and Micawbers, that one cannot wonder if certain Charles O'Malleys and Tom Burkes of Ours felt themselves somewhat awkwardly placed." O'Malley drove out to Lever's residence at Rathmines, for the purpose of demanding an explanation of why the writer should thus presume to use his name for his book. Lever was from home when he called, but must, on his return, have been sorely distressed when he saw by his visitor's visiting card, that not alone were those characters namesakes, but that one as well as the other was an "Irish Dragoon." On the next day Lever called at the Law Library, Four Courts, and explained to him that his calling his work "Charles O'Malley, the Irish Dragoon," was purely accidental. The idea of challenging Lever would make him more ridiculous than any of the ridiculous pranks attributed, as he supposed, to him in the pages of the "Dublin University." My late lamented and learned friend, John Adair, Esq., writes that "I was in the library when Lever came there to be introduced to O'Malley, and explain that he had not the least intention to allude to him. I remember on that occasion speaking to Lever, and hearing it said by barrister friends, that O'Malley had consulted Edward Litton, q.c., afterwards Master in Chancery, a great friend of his, as to bringing an action against Lever for what he wrote." Lever informed his publisher, when reprinting in book form the articles that had previously appeared in the magazine, that Mr. O'Malley had written to demand a change of title, but that the application was preposterous. Mr. FitzPatrick writes that Lever consulted Lord Sussex Lennox and Lord Ranelagh, and both laughed at the idea of attending to such a demand. The publisher, alarmed at having an action brought against himself, found much difficulty in yielding to Lever's demand. At length the book issued from the press, and O'Malley, of the Connaught Circuit, was ever after

¹ "Life of Lever," by William J. FitzPatrick, Esq., J.P., p. 141.

pleased with the character of the "Irish Dragoon," and he thenceforward bore with an equanimity undisturbed the jokes of his brethren of the Connaught bar, upon the similarity or dissimilarity of his namesake and martial brother!

In the Spring Assizes of 1841 was tried in Galway the case of *Rutledge v. Rutledge*, which was remarkable chiefly for the number and eminence of counsel engaged; Messrs. Daniel O'Connell, M.P., Edward Litton, Q.C., M.P., Thomas Berry Cusack Smith, Q.C., being engaged on the same side with no less than twelve of the barristers belonging to the Circuit. It is unnecessary for us to delay our readers further with this case, as the interest, if any, attaching to it belongs rather to the past than to the present.

At the same assizes a case of no great interest to those who love sensational trials was tried in Galway at the Spring Assizes of the last-mentioned year (1841), James Henry Monahan, Q.C., being the counsel for the plaintiff. We refrain from giving the name of the case, as the parties are still living, and the only reason for our alluding to it at all, is to show the barbarous state of the law of this land as regards the registration of deeds and wills. The action was an ejectment on the title for lands lying in the neighbourhood of Loughrea. From the Deeds Office in Henrietta Street, Dublin, it appeared that there was then registered what lawyers call a memorial of a certain indenture, by which the limitations of the estate were settled, and that memorial fell short of relating what was well known to have been in the deed. So counsel had in his direction of proofs advised that the deeds should be produced, and if not produced, the plaintiff should fail in showing his title to the lands in question. The missing deed had been prepared by a solicitor of great eminence in his profession, and was by him kept in a box, on which was lettered the name of his client. The solicitor died, and his successor falling into debt, his furniture was seized and sold by his creditors; the papers, boxes, &c., were deposited in a house in Lower Gardiner Street. The plaintiff, a gentleman whose youth was spent in the West Indies, forgot, if he ever knew, all about the deed-box, and in whose custody it was. He had, indeed, a copy of the indenture; but his counsel in his direction of proofs, as we have said, advised that the deed itself must be produced, the memorial being almost worthless. As the deed

was missing, the defendant in possession could not be displaced until plaintiff proved his title. Advertisements for the lost deed-box were inserted in every Dublin paper, and at length, after great expense and delay, the box was found in a cellar where it had been stowed away for forty or fifty years. The case came on at the assizes, the deed entailing the estate was put in evidence, and counsel denounced the state of the law, which, whilst it insisted on a comparatively worthless memorial being registered, allowed the deed to run the risk of being lost; far better are things managed in other countries, where, as in Spain, the entire deed must be registered; nor can a copy either of a deed or a will be obtained in that country without an application to the Court for an order on sufficient cause shown to give such copy, at such charges as the judge may think fit, varying from a suitor suing *in forma pauperis* to one in affluent circumstances, thus protecting from idle curiosity the secrets of families. But we are verging on topics lately the subject of a barren commission. Suffice it to say that a verdict was had for the plaintiff, and that it was never disturbed, and if there were ground for disturbance, Mr. FitzGibbon, Q.C., the learned counsel for the defendant, would not have been slow in disturbing it.

MR. JUSTICE KEOGH.

Amongst the names of those admitted to the Connaught Bar Society in 1841, is that of William Keogh. All the others, nine in number, are gone and forgotten. Not so with him: his body is entombed in the sepulchre of mortality, but his name still lives, and is likely to live for years to come. He was the eldest son of a Roscommon gentleman, who resided in Lower Gardiner Street, Dublin, where the subject of our memoir was born in 1817. A graduate of Trinity College, he took classical honours in his undergraduate course; but his fame in the University rested chiefly on his oratorical displays in the College Historical Society. In 1840 he was called to the bar, and immediately applied himself with vigour to his profession. In 1841 he joined the Connaught Circuit, where his inexhaustible fund of information, fun, wit, and humour made him the centre of attraction. He soon rose into practice, and, while yet a very junior stuff-gown lawyer, conducted cases in which Mr. Brewster,

q.c., had been brought down "special" to oppose him; and the Goliath of the bar was so taken with his great ability, that he formed a friendship with him that never ceased during his life. In 1843, Mr. Keogh originated a movement to publish reports of cases argued and decided on the six circuits, two barristers to be appointed for each. The plan was well received, subscribers were many, and on the Connaught Circuit, Mr. John Henry Workman, a clever young barrister, and Mr. Keogh were the reporters. Associated with Mr. Barry, he published a volume of Equity Reports said to possess much merit. It is not unworthy of observation that many of the judges on the Irish Bench, in the present century, had been reporters—Sir Joseph Napier, Chief Justice Lefroy, the late Master of the Rolls (Mr Smith, q.c.), Mr. Justice Hayes, Mr. Justice Lawson, Judge Flanagan, Judge Townsend, and Judge Warren.¹ Unfortunately for the Circuit Reports, Mr. Justice Keogh was unable to remain long a reporter. His connexion, however, with these works, taken in conjunction with his varied information and kindliness of manner, obtained for him troops of friends. At one time counsel at a court-martial, at another time defending a Catholic clergyman's character in an action for slander, he proved himself equal to the task imposed upon him, being thoroughly conversant alike with military and ecclesiastical law. He became a great favourite at the military mess, and deploring that he could not in the bar-room return the compliment, he gave notice at the February meeting of 1846, "that he will move at the next meeting of the bar that officers of the army and navy on duty be invited to the bar-room and be at liberty to dine with the bar upon the invitation of any member, first having submitted the name to the father of the bar." "The feeling, however," as Mr. Keogh, wittily remarked, "of the mentals was against the regimentals," and the motion was never moved. Meanwhile the study of the law began to lose its charm for his too active mind. During his sojourn in London in the long vacation of 1846, he became acquainted with a well-known wealthy Jew who was at the time a dominating individual in the financial world. The Hebrew millionaire was so forcibly impressed with his intellec-

¹ "History of Law Reporting in Ireland," III. "Irish Law Times," pp. 659-673.

tual power and ready wit, that he started him as candidate for the borough of Athlone, and backed him with lavish gold. Being an intimate friend of the Most Rev. George Browne, D.D., Catholic Bishop of Elphin, and of many of the priests, he was, in the month of August, 1847, returned; and in the House of Commons he speedily took a prominent part, and was recognised as one of the ablest of debaters. Let it not, however, be supposed that he had abandoned the practice of his profession—quite the contrary; he regularly travelled the Circuit, being engaged in every important case thereon.

During the early period of the judicial life of Chief Justice (then Baron) Lefroy, the Circuit which fell most frequently to his lot was the Connaught, of which he thus writes:—"I have had a very heavy Circuit; but I have now nearly finished it, and I have not met an unpleasant word or act on the whole of it. The cordiality of the Connaught bar makes any amount of work comparatively light."¹ In the Criminal Court in 1847 is revealed much of the horrors of that dreadful year of famine, Mr. Keogh being engaged in almost every case of magnitude for the Crown. The following charge of Baron Lefroy to the Grand Jury of the County of Galway tells of the sad state of the Province at the Spring Assizes of 1849:—

"Mr. Foreman and Gentlemen of the Grand Jury, I deeply lament to be obliged to bring before you the appalling state of things which the calendar that has been laid before me presents as existing in your jail. It appears that the number of prisoners is no less than 764, while the building is only calculated to accommodate 110. As, however, I shall have to call your attention to this subject at another period of the Assizes, I will not now dwell further upon it. The number of prisoners for trial is 423; and from the analysis that has been made of the Calendar, the cases appear to be 297 in number, of which you will have to dispose. Of this number there are fifteen persons committed on charges of murder or manslaughter; but I understand there are only three of the cases bearing the character of murder, and they are not of recent occurrence. There are 24 cases of burglary and robbery. The cases of sheep-

¹ Memoir of Chief Justice Lefroy, by his son Thomas Lefroy, Esq., Q.C., p. 235.

stealing amount to 115; the cases of cow-stealing to 57; and besides these there are 86 cases of larceny. The number of sheep- and cattle-stealing cases is quite alarming. They might be accounted for when want and famine, from the sudden failure of the potato crop, overwhelmed the people; but now that so many efforts are being made to supply the wants of the poor, this wholesale system of plunder cannot be endured. It is the duty of those to whom the administration of the law is entrusted to see that it be made effectual for the end and purpose of justice, by imposing punishment on the guilty, and deterring others from the commission of similar offences.”¹

Mr. Keogh won the entire approbation on this Circuit of the learned baron and of his brother judge, Mr. Justice Moore, both of whom wrote to the then Chancellor (Sir Maziere Brady) in the strongest terms, recommending him for a silk gown. The recommendation was not unattended to, and on Mr. Keogh's return to the Four Courts, he was informed by the Lord Chancellor that “Her Majesty had been graciously pleased to appoint him one of her counsel learned in the law in Ireland;” and he took his seat within the bar accordingly. Mr. Keogh's subsequent career borders on the marvellous. Associated with the defenders of the faith, he was received by the Catholic clergy, and by them recognised as a leader against the onslaught made by the Prime Minister on the Catholic hierarchy restored by the brief of Pius IX. in England. On the platform the learned gentleman was merciless in his denunciation of Lord John Russell, who had the effrontery, in his celebrated letter of the 5th of November, 1850, to the Bishop of Durham, to stigmatize the ceremonies of the Catholic religion as “the mummeries of superstition.” The bitter opponent of the “Ecclesiastical Titles Bill,” he was put in nomination again for Athlone at the General Election of 1852.²

A monster meeting was held in that town on the 26th of June in that year, in favour of “Civil and Religious Liberty, and of Tenant-right,” at which Archdeacon O'Reily thus spoke—“I would now

¹ Memoir of Chief Justice Lefroy, p. 249.

² “The Weekly Telegraph” newspaper, 28th June, 1852.

remind you that you should not let your exertions rest this day, but aid the other Irish members who have joined with Mr. Keogh in resisting the enemies of our creed and our country. (Loud cheers and waving of hats for William Keogh)." He was returned, though not without a struggle. Unfortunately, in the excitement of the moment, he made some indiscreet after-dinner speeches, which were treasured up against him by his enemies; and after he had accepted office, no opportunity was lost in flinging in his face words which would never have been uttered in calmer moments, and which probably, in the moment of utterance, were not intended to bear the extreme meaning which was put upon them. It was in the previous month of February, and within a few months after the "Ecclesiastical Titles Bill" had become law, that Lord John Russell was constrained to resign, and was replaced by the ten month ministry of the Earl of Derby, with the Right Hon. Francis Blackburne, Chancellor, and Mr. Whiteside, Attorney-General for Ireland. On the 28th December, in the same year, a coalition ministry was formed, the Prime Minister being the Earl of Aberdeen, with Mr. Gladstone, Chancellor of the Exchequer, Mr. Brewster, q.c., Attorney-General, and Mr. Keogh, q.c., m.p., Solicitor-General for Ireland. On the 10th of February, 1855, Lord Palmerston came into office, several of the ministers retaining their places in the reconstructed cabinet. As in England, Lord Cranworth served Her Majesty as Chancellor under the Earl of Aberdeen and Lord Palmerston, so in Ireland, Sir Maziere Brady retained the seals under both leaders; Mr. Brewster, however, declining to hold office, retired, and Mr. Keogh became Attorney-General for Ireland, and while in that office aided in causing to be brought into Parliament and passed a measure which empowered owners of limited estates, tenants for life, to make leases of lands in Ireland, for Roman Catholic chapels,¹ and for manses or glebes for the Catholic clergy.

The death of Mr. Justice Torrens in 1856 caused a vacancy in the Court of Common Pleas, to which Mr. Keogh was appointed. Of his judicial career we need hardly speak. It is admitted on all hands that he was a good Common Law judge. He presided at several important trials; but it is the more recent part of his official

¹ 18 & 19 Vict., chap. 39, A.D. 1855.

career that will long secure him a place in the gallery of Irish notabilities. His uncompromising attitude in connexion with the Fenian rising, the vehemence with which he denounced disaffection, and the vigour with which he punished treason, rendered him the special object of odium to the extreme Irish party. But his culminating performance was the memorable Galway judgment in 1872. No utterance in our generation produced such a sensation as this. It angered one section of the people to burning hostility ; it excited another to enthusiastic admiration. Few judges have been more constantly attacked, and it is stated that to the attacks which followed that celebrated judgment the subsequent unhinging of his mind is to be traced. The last time that I saw him was on board the Holyhead steamer, on his way to Brussels ; it was in the autumn of 1878. He was pale, emaciated, embarrassed in manner, and indifferent to all that was passing around him ; speak to him, bring before him the glowing and impassioned images of the past, he gazes listlessly and mechanically at you, makes no sign, and dropping his head, buries it in his bosom, and sinks into a moody and melancholy abstraction. And this was the Right Hon. William Keogh, whose oratory had charmed the University, the Senate, and the Bar, the magic of whose eloquence held multitudes in a state of breathless admiration. On the 30th September, 1878, he died a melancholy death at Bingen in Germany, receiving before he died the last sacraments of the Catholic Church. In private life he was esteemed for his warm and generous kindness. He had many social virtues, and was greatly beloved by a circle of attached and admiring friends. An admirer of Milton, he delivered, in 1867, a lecture on the prose works of that Puritanical writer, on which subject we are not in a position to offer an opinion.

O'CONNELL AND JOHN BEATTY WEST, Q.C.

The year 1842 was one of mourning for the Connaught Circuit. The " Legal Reporter," in its obituary, announces the death, on the 1st of January, of John Beatty West, q.c., who had since 1816 been a member of the western bar, and whose advocacy was of the highest order. At the General Election, held in the autumn of 1841, Messrs. West and Grogan stood for the city of Dublin against Messrs. O'Connell and Hutton. Mr. West having at the

hustings called on the electors to vote for him, Mr. O'Connell commenced his speech by telling the voters that he did not mean to ask a single vote from a single voter. No! such were not his tactics; but what he meant to do was to call on the ladies of the city of Dublin, and he had no doubt their persuasive powers would win their husbands round to his side; and if that were done, he would carry his election—for vote for him the infatuated husbands of the infatuated ladies should do. "Now, *ladies*" (to the artizans' wives), "I throw myself on you" (sensation), and taking off his hat, "whether will you support me or that fellow, West?" "Why," said Mr. West, "would you vote for that giant with a wig?" "Avaunt, quit my sight," exclaimed O'Connell, tearing off his wig and flinging it into the air, and presenting rather the appearance of a reverend and shaven monk of St. Omer's than of an accomplished lawyer. This comedy or farce, however, did not carry the day: the *ladies* were unable or unwilling to place Mr. O'Connell at the head of the poll. Mr. West won the seat; alas, he never took that seat. The excitement of the election was too much for his strength, and within four months his end was a melancholy illustration of the maxim, "What shadows we are, and what shadows we pursue!" The learned counsel whose death we have told was married to a daughter of Mr. Justice Burton, an Englishman, who had purchased a considerable portion of the Eyrecourt estate in the County of Galway, and had settled it on Mr. West, and which was afterwards sold to Mr. Allen Pollock, in the Landed Estates Court. His residence was at Mount Anneville, afterwards sold to William Dargan, and by him to the nuns of the "Sacré Cœur." His town-house was 80 Stephen's Green, now the residence of Mr. E. C. Guinness.

The announcement of the death of James Henry Blake, q.c.,¹ in August, 1842, was indeed a sad one. Gifted with talents of the highest order, he possessed at the same time a most amiable disposition and the most engaging manners. He belonged to a respectable family, whose ability was remarkable—an ability which he inherited it all its fulness. He died suddenly in London on the morning of the 4th of August, 1842, as he was on his way to the

¹ "Legal Reporter," Saturday, 7th August, 1842.

Continent. Had he lived, he must have risen to the highest eminence at his profession. It was not my good fortune to have ever seen him; but I have known several who knew him well, and who, after forty years, speak of him as the brightest ornament of the Circuit and of the bar. Needless to say, that the regret was general for the early death of one so gifted. Patrick J. Blake, Esq., q.c., who now enjoys his *otium cum dignitate*, long a member of the Connaught Bar Society, and Chairman of the County of Fermanagh, was his brother, both cousins of the Right Honourable Michael Morris, C.J.

Let us now pass on to 1845. There was tried in that year, and in the town of Galway, the amusing case of *Kelly v. Young*, before Mr. Justice Ball and a special jury. The plaintiff, Mr. Michael Kelly, claimed a racing cup and stakes, which Mr. Young, the defendant, refused to give up, on the ground that one of the conditions of the race was that the horses should be ridden by gentlemen riders, and that the stewards had awarded the prizes to Mr. Young, a lieutenant in a regiment quartered at Athlone, who came in second, in preference to Mr. Kelly, the rider of the foremost horse.

Messrs. James Henry Monahan, q.c., and William Keogh were counsel for the plaintiff, whilst for the defendant appeared Gerald FitzGibbon, q.c., and Henry Concannon.

The plaintiff having proved that he rode the winning horse, his counsel submitted that he was a gentleman within the meaning of the word, as defined by Blackstone in his commentaries on the laws of England,¹ which was, that any man who could "live idly and without manual labour, and will bear the port, charge, and countenance of a gentleman, shall be called 'master,' and accounted for a gentleman," and, according to Coke Littleton, "gentlemen be right cheap in this country."

Mr. FitzGibbon, q.c., for the defendant, laboured to break down Mr. Kelly's right to become a competitor in such a contest. For this purpose witnesses were examined to prove that the Marchioness of Clanricarde did not visit at Mr. Kelly's, though within a morning call, and therefore Mr. Kelly could not, with a *scintilla* of

1. "Black. Com.," p. 106.

propriety, weigh himself in the same scale with a Lieutenant of Her Majesty's 47th Regiment of Foot. On the other hand, it was submitted by counsel for the plaintiff that if the decision were, that none should be reputed gentlemen whose wives had not been visited by the Marchioness of Clanricarde, such an alarming decision would amount in fact to a disgentlemanizing of two or three counties.

Of the notions which prevailed forty years ago on the question of gentility, a curious instance was elicited on this trial. A witness for the defendant, a Mr. James J. Skerrett, of Carnacrow, having declared upon his oath that he did not consider Mr. Kelly a gentleman, was on his cross-examination asked by Mr. Monahan, Q.C., to define the meaning of the word "gentleman."

Witness.—"A 'gentleman' is a person whose father was a gentleman, and none other!"

Mr. Monahan, Q.C.—"So that if Mr. Kelly's father was a peasant, Mr. Kelly would be a peasant still, no matter what amount of wealth or education he possessed?" "Precisely so."

Mr. Monahan, Q.C.—"Is a barber a gentleman?" "Most certainly not."

Mr. Monahan, Q.C.—"Did you ever hear of Sir Edward Sugden, the present Lord High Chancellor of Ireland?" "Oh, yes; frequently. I was a ward—a minor—in his Court. His father, I'm told, was a barber."

Mr. Monahan, Q.C.—"His father was a barber. Is the Lord Chancellor a gentleman?"

Witness (with emphasis).—"Most certainly not."

Mr. Monahan, Q.C.—"Oh, Mr. Skerrett, you may go down."
(Loud laughter.)

His lordship did not "think that the witness should be thus laughed out of Court. His best answer might be conveyed in another language—*si non rogas intelligo*. Really this is a question for a lawyer to answer, and a puzzling question too. As far as he could remember, the word 'gentleman' is derived from the Norman-French—*gentil-homme*."

Mr. FitzGibbon, Q.C.—"Precisely so, my lord; but that does not aid us in discovering the original meaning of the word, which he apprehended was derived from the Latin of the early days of the

Roman Republic; and if they traced its meaning in this way, they would find that the witness was not so far astray in saying that a gentleman was one whose father was a gentleman. In the early Roman Constitution, the free communities were divided into tribes, which tribes were called *gentes*, and the free families of the free communities were called *gentiles*, according to Cicero;¹ and any single member of those families was called *gentilis homo*, and *gentilis homo*, a gentile man, must trace back to gentile, that is gentle, ancestors. The tribal city they were then in afforded an example of this; for when voting for the election of a warden, the voter must prove that his father was of the gens, the race, and so entitled to vote.

“*Mr. Justice Ball* would not embarrass the jury by going back to Cicero. The question he would leave to them was—Was Mr. Kelly, who rode the foremost horse, a gentleman? If they found that he was, there would be no difficulty in their finding that he was entitled to the prizes he claimed. If they found the other way, then of course he should not have the prizes. By the articles of the race it was clearly meant to prevent jockeys, professional riders, or people in an humble sphere of life, from riding the race.”

The verdict was for the plaintiff, and it was refreshing to see with what a jaunty air he left the Court, as indeed it was but natural that he should, seeing that he might thenceforth, *quatuor pedibus*, ride *pari passu* with an officer in Her Majesty's 47th Regiment of Foot, and seeing also that he left with his silver cup, his stakes, and his costs, which were to be paid by the losing party, who had lost the cup, the stakes, and the costs together.

The famine of 1847 revolutionized the condition of Ireland. The people of Ireland had lived chiefly on the potato, a root abundant in its produce and cheap in its production. If cheapness of food be an important element in prosperity, then the Irish people ought to have been prosperous, for they produced cheap food in the potato. But that cheapness, which would have been a blessing to a people at a fair standard of comfort, proved simply a ruin to a people who asked for little more than a roof and a dry potato! And with

¹ Cicero Top., 6.

the roof and a dry potato they married and were given in marriage ; they increased and multiplied ; they relied on the root of plenty ; they had no other resource to fall back upon ; it vanished, and they were destroyed. How is it that in a night a blight blasted the potato ? The wise men of the world have been asked to answer, but they have been as powerless as the soothsayers of Babylon ; and the historian of that time can do no more than record the awful fact that such a famine swept over Ireland as has seldom been exceeded in the world's history ! With the famine came the ruin alike of the landlords and of the tenants. Hundreds of thousands of the miserable peasantry died of starvation. Funeral processions then ceased for years, and the uncoffined dead were flung, without religious ceremony, in heaps into common graves, from which they were scraped by the hungry dogs, that prowled through the churchyards, feasting on the dead, gorging, and growling o'er carcass and limb.

“ Alas, poor country,
Almost afraid to know itself ! It cannot
Be call'd our mother, but our grave, where nothing,
But who knows nothing, is once seen to smile ;
Where sighs, and groans, and shrieks that rent the air,
Are made, not mark'd ; where violent sorrow seems
A modern ecstasy ; the dead man's knell
Is there scarce ask'd for who.”

The nations stood aghast at the tale of Irish woe ; the whole civilized world rushed to the rescue. Subscriptions poured in from foreign and home Societies, and the mite of the widow came side by side with the rich gift of the wealthy from near and from far, to feed the hungry, to give drink to the thirsty, to clothe the naked, to harbour the harbourless ! Foremost at that work of mercy was Her Majesty the Queen, who felt as a woman for the women of Ireland. Her example was followed by many of the European sovereigns. The Pope contributed largely to the good work, and even the Sultan of Turkey sent a princely offering. But it is for others to tell the story of that famine, of the efforts to alleviate it, and of the social and political consequences which ensued from it ; for us it only remains to say of the bar, that whilst each one in his private capacity, exerted himself to the utmost in the work of charity, so did they in their corporate

capacity contribute for the same end. Thus we find in the morning papers of the 23rd January, 1847, the following paragraph :—

“ There being very great distress and famine in the West of Ireland, Mr. George French (father of the Connaught bar) directed the secretary to call a special meeting of the Society, for the purpose of considering the propriety of not dining together after this term, and of applying the usual dinner subscriptions towards the relief of the poor.

“ The meeting accordingly took place in one of the arbitration rooms of the Four Courts, on Saturday, the 23rd of January, at which a large number of the Society were present, when it was resolved, on the motion of Mr. Charles Blakeney, that the bar shall not dine together this term, and that the usual dinner subscriptions should be applied towards the relief of the poor, and allocated in equal parts to the towns on the Circuit.

“ CHARLES KELLY (Secretary).”

Again, on the 31st of May, 1847, a special meeting of the Society was called, when it was “ unanimously resolved that the usual dinner subscriptions should be applied to the relief of the poor ; ” and at the meeting of the Society held in January, 1848, it was directed that “ the dinner subscriptions be appropriated to the benefit of the poor widow and daughter of Mulville, who had been for many years a waiter of the bar, and inquiries were ordered to be made as to the best mode of application.” The inquiries were made, and a handsome sum was given by the bar to the widow of their old servant, together with a marriage portion to his child.

This is not a novel feature in the history of the Connaught Bar Society. From the records of the Circuit¹ it appears that in 1797, when we had our own Parliament, the distress was great in the city of Dublin, and that the Connaught Bar Society was not slow in subscribing to relieve the wants of the poor.

“ Friday, 30th May, 1797, being the day after the conclusion of the Easter Term, the following requisition was handed to Mr. Hillas, the secretary :—‘ We, the undersigned members of the Connaught bar, request you will bespeak dinner for as few as

¹ “ Connaught Bar Book,” p. 21.

possible, and that you will apply the overplus to the relief of the distressed manufacturers of the city.' That requisition was signed by all the members of the Connaught bar in Dublin.

"Dinner only ordered for four members; no person dined; the collection applied to the relief of the sick manufacturers, amounting to the sum of £12 10s. 3d."

To the wants of those who have grown old in their service the Connaught Bar Society have always looked; and in the years of famine especial care was extended to them on the principle that "charity begins at home." When the whole country was plunged in ruin, they were liberally paid for their services, and allowances were made to their widows and orphans. The bar waiters appear to have been fixtures on the Circuit, and many of them geniuses in their way. Poor Moran, to whom Mr. Justice Keogh gave the more elegantly sounding name, "Signor Morani," was without doubt a fossilized-looking individual as he appeared assizes after assizes in the bar room. His dress was a blue swallow-tail coat, with gilt buttons, velvet collar, deep white cravat, black trousers, or rather small-clothes, that came to within two inches of his shoes, disclosing a pair of snow-white stockings, exquisitely darned in the heels; and, to crown him, his tall and conical, well-brushed beaver hat had the appearance of an heirloom which had descended to him through many generations of "articulately speaking" head waiters. He knew "the ins and the outs of every family on the Circuit." For the ancient gentry of the country, especially if they were connected with the nobility, he had the profoundest respect; and whenever a member of an old Catholic family happened to be a practising barrister on the Circuit, to him his attentions were alike obsequious and painful. "Morani," said a barrister, whose pedigree did not inspire him with respect, "a glass of champagne." "Wait a while, sir; I'm helpin' the gintlemen first," was his saucy reply.

The Signor could not bear to see one of the *ould* stock too great a tea-drinker. "Moran, let me have some more tea; that is capital tea." "I will not, sir, bring you up any more tay. I brought you one tay-pot, and think one tay-pot full o' tay, afther dinner, is plenty enough for any gintleman's honour!" Speaking of the Connaught bar waiters, shocked was I to see a paragraph in the Dublin papers¹ stating that the "wife of the

¹ "Dublin Evening Mail," 30th June, 1884.

waiter and rober to the Connaught Bar Society on Circuit was arrested for begging in the streets of London in the summer of 1884. Her husband, it appears, had been a member of 'The Invincibles,' and she having threatened to inform against him unless he gave up his connection with them, he deserted her, fled to America, and left her behind him penniless in that city. She had seen the murderous knives at Carey's house in Denzille Street, Dublin; and his position in relation to the Connaught Bar Society sheltered him long from suspicion."

A.D. 1847.—In this year disappears from the roll of the Connaught bar the name of Mr. Redmond Peter O'Carroll, whose story is of interest sufficient to warrant Sir Bernard Burke in giving it a place in his "*Vicissitudes of Families.*" When complaining of the great insecurity in the preservation and production of wills, prior to their reaching their official custody, he says that under the present system the only chance, in many instances, of their appearance in due course, is the honesty of those who keep or who find them; and he illustrates this position with a story, the facts of which are within his knowledge and ours. Peter Warren Locke, of Athgoe Park, in the County of Dublin, Esquire, claimed descent from a family of remote antiquity. He had two sisters, Mrs. John Deane Skerrett, of Ballinduff, in the County of Galway, and Mrs. John O'Carroll, of Ardagh, both of whom were widows at the time of his death in 1832. Mr. Locke had been twice married, first to Miss Kennedy, aunt of Sir John Kennedy, Bart., and secondly to Margaret, sister of the Right Honourable Sir Thomas Esmonde, Bart.; but by neither of those ladies had he issue. Previously, however, he had had two illegitimate children—a son and daughter—to each of whom he gave a good education. At the time of Mr. Locke's decease the son was dead, but the daughter was living; and as no will had been discovered, administration was granted by the Court of Prerogative, as in a case of intestacy, to Mr. Locke's sisters and co-heiresses. Thereupon Athgoe Park, which was under settlement, devolved on the eldest of those ladies, Mrs. Skerrett, and the estate of Castleknock and Blancherstown, worth £4,000 a-year, besides other property, was divided between her and her sister, Mrs. O'Carroll. Mrs. O'Carroll had several children: Redmond Peter O'Carroll, Frederick Francis O'Carroll, and a daughter married to Carroll

Patrick Naish, Esq., of Ballycullen, Co. Limerick. The eldest son, Redmond Peter O'Carroll, after passing through a distinguished course at the Jesuits' College at Stoneyhurst, became a barrister, and was agent to the estate. He married Miss Mary Goold, niece of Sir George Goold, Bart. Frederick Francis was father of Frederick John O'Carroll, Esq., now a member of the bar. Mrs. Skerrett, and her sister Mrs. O'Carroll, entered on the full enjoyment of the property, kept adequate establishments, and as the co-heiresses of the Lockes of Athgoe, took their position in society. Meanwhile Miss Locke, the natural daughter of Mr. Locke, was invited to Athgoe Park, and, out of regard for their deceased brother, a settlement was made by the sisters upon her. Matters thus went on until it became necessary to find a lease that had been made to one of the tenants, for the purpose of bringing an ejectment against him for non-payment of rent. A bundle of leases was found in an old chest at Athgoe by Mr. Redmond Peter O'Carroll. On examining it, a paper casually fell from the bundle. He took it up, and was about to commit it to the flames as worthless, when, to his inexpressible astonishment, he found that it was his uncle, Mr. Locke's, will, made some years previously, during the life of his natural son. To that son he had devised all his estates, with remainder to his natural daughter, Miss Locke. On the next day Mr. O'Carroll laid the will before eminent counsel, who advised that the testator had power to make the will, and that under it Miss Locke was entitled to the estates. Returning to Athgoe, he desired to see Miss Locke, told her all that had happened, and handed over to her safe custody the important document which deprived him of the succession to a considerable property. Next morning Miss Locke placed the matter in the hands of her solicitor. The agency—oh! the ingratitude!—was taken from Mr. O'Carroll, and possession of the unsettled property was obtained by the voluntary resignation of Mrs. Skerrett and Mrs. O'Carroll. Mrs. Skerrett did not suffer as much as her sister, for the Athgoe Park estate was not affected by the will, being, as we have said, in settlement; but Mrs. O'Carroll, the mother of Redmond, lost her entire means of support. In the same year he was appointed Law Adviser to the Commissioners of National Education, at an annual salary of £100. This vicissitude of fortune told

on the health of Mr. O'Carroll. He spoke not indeed of his disappointment, keeping his feelings in his own breast, but, with unstained honour, he died in 1847, perhaps of a broken heart.

His widow, a baronet's niece, became matron of Grangegorman Prison, Dublin. She has lived to see her two sons in the Church—the eldest, the Rev. John O'Carroll, a member of the illustrious order of the Jesuits, and the other, the Rev. Francis Augustus O'Carroll, who had been called to the bar, now a priest of the Oratory of South Kensington. And she has further the gratification of seeing her husband's sister, Anne Margaret, wife of Carroll P. Naish, the mother of a numerous family, the eldest of whom is the Right Honourable John Naish, now Lord High Chancellor of Ireland.

The best index to the disorganized state of society in the dismal period of the famine is the criminal calendar. Previous to the famine, the average number of criminals all round the Circuit was 250, divided thus—Galway, 68; Mayo, 66; Sligo, 33; Leitrim, 33; Roscommon, 50. Now, however (we speak of the Spring Assizes for 1847), there were 1,850 prisoners awaiting trial, of whom 650 were lodged in the County of Galway gaol, 700 were crowded into the gaol of Castlebar, while 500 were distributed amongst the remaining three counties. A still greater number awaited their trials at the Summer Assizes of the same year. The year 1848 was a shade better, and 1849 was better still; and it is much to the credit of the western province that the political troubles which, in other parts of Ireland, followed the French Revolution of 1848, culminating in the *battle* of Ballingarry, were here unfelt.

Although the judges, in their addresses to the several Grand Juries, deplored the amount of crime that stalked abroad in those years, filling the gaols with numbers for whom there could be no proper accommodation, yet the crimes were for the most part confined to that class which writers on natural law, under the circumstances, might justify; such as the stealing by the hungry of flour from the mill, of bread from the baker, meat from the butcher, fish from the fishmonger, and sheep and cattle from the farmer. The Crown counsels' fees at the Spring Assizes of 1848 amounted to thousands of pounds, whilst the dock lawyers

were left almost unemployed; for the prisoners felt that imprisonment was preferable to the horrors of starvation, and fortunate was he whose sentence was transportation to happier climes!

Although such crimes as those we have spoken of were the prevailing ones, yet, as in times past, murders were still committed, and landlords were still shot down with a merciless hand.

In 1847 took place, at Carrick-on-Shannon, the trial of two persons charged with the wilful murder of the Rev. Thomas Maguire, one of the most popular and extraordinary men of his day.

Poor Father Tom! His were the best horses and the best hounds, the best dogs and the best guns. In the hunting field, in the pulpit, and at the altar, he held the foremost place, nor did he think that a ride across the country was incompatible with his sacred duties. He rode, and rode well; he preached, and preached well. His ordinary sermons were for the most part extempore; but his Lenten discourses, which were generally of a controversial nature, and prepared with much care, were usually delivered in one of the metropolitan churches. A man of boundless information, he conducted in 1827 a controversy, which lasted for six days, with the Rev. Thomas Pope, one of the ablest Protestant divines of the day. Of the result produced by such a display of learning, we are unable to speak. Mr. O'Connell and Admiral Oliver presided at this trial of polemical skill, upon which the verdict of the world has not yet been, and never will be, given. Although Father Tom Maguire was the stern and uncompromising advocate of the Church of Rome, he was still popular amongst the Protestant gentry of the County of Leitrim. When shall we see his like again? The poor *Padre*! The world was startled one morning by an announcement in the Dublin papers—"Murder of the Rev. Thomas Maguire, P.P." At the Summer Assizes of 1847, his housekeeper and her husband were indicted for his murder. The case for the Crown was that he had been poisoned by arsenic, administered to him in a dose which he supposed was medicine. Mr. Henry Concannon, of our Circuit, appeared for the defence, and contended that

the poison was accidentally given by the prisoners, who knew nothing of what the supposed medicine contained. The jury adopted this view, and they were acquitted.

Mr. Concannon then rose into extensive practice ; as a cross-examiner he was skilful, and could turn every gesture of the witness to his own advantage. Shortly before his death he defended an ex-policeman, charged with Fenianism, and with endeavouring to seduce two soldiers of the 5th Dragoon Guards from their allegiance. The trial was at Castlebar, and one of the troopers distinctly swore that "they had been a-drinking in a public-house in the town, on the night of the alleged conversation. The prisoner came over and shook hands with us, and ordered a glass of spirits for each. He then stood up, and said that he was going to give a sentiment, and he shouted out, 'To hell with the Queen;' and instantly we threw down our glasses and walked out."

Mr. Concannon (for the prisoner)—"Did you, as became a soldier, walk out the moment he said, 'To hell with the Queen'?" "Yes, we flung down our glasses, and walked out." "And, as an Englishman, and a soldier, you would not listen to him saying another word?" "No, we would not listen to one word after such a sentiment." Mr. Concannon then addressed the jury for the prisoner: the soldiers he extolled for their loyalty, and he asked the jury to believe that what the prisoner, who had himself been a policeman, was about to say was, "To hell with the Queen's enemies," but that "the soldiers would not hear him after such a sentiment;" and the jury, or at least some of them, taking this view, refused to find him guilty. There was a disagreement, and the fellow thus escaped through the ingenuity of his counsel.

Following the famine years came the cholera of 1849. These visitations remind one of the famine and plague that desolated this country five hundred years before—a desolation which Friar Clynn thus describes in his Annals:—"I have now brought the Annals of Ireland down to this year (A.D. 1348). I have completed them, and digested them, for other generations to read, if, indeed, another generation shall succeed to this; for it appears

to me as if the whole race of Adam is about to be swept away.”¹

The Summer Assizes for 1850 betokened the return of happier times, and the number of criminals in some of the counties fell below what it had been in 1845. In the Record Court of Sligo it was believed that trials of interest would take place, sufficient to occupy the judges for several days; but these trials never came on, as two of the records were withdrawn, and three were settled, and one, owing to the absence of a material witness, was postponed until the next assizes. A week, exclusive of travelling days, had been allowed for the County of Sligo. And the bar looked with dismay on a fruitless week spent in an assizes town where there were few prisoners to prosecute, and few to defend. The question, therefore, for all was how to spend the long week in Sligo. A happy device was, therefore, hit upon. It was agreed that a picnic, ending with a dance, would be just the thing. A committee was appointed, cards were sent out, and a lovely spot on the shores of Lough Gill was selected. The day came, the rising sun promised a sultry day, but the wind was freshening on the lake towards noon, and multitudes of boats, with flags flying, got under weigh at two, each boat with a precious cargo of human beings on board; while carriages and horses rattled along the roads bringing the more timid to the place of rendezvous. At other picnics, people oftentimes assemble to say nothing, and look as sombre as if they had come to assist at the opening of their entertainer's will; but here, where there were men of learning, eloquence, and wit, everybody seemed ready for enjoyment. Some sauntered through the arbutus groves, others, admiring the lake and its wooded islands, and mountains rising from its shores, wandered amidst solitudes where the grass grew with all its native luxuriance, and the heath flourished without artificial assistance. At four o'clock the sound of a bell reminded the wanderers that it was time to return, and at half-past four lunch was announced; the father of the bar offered his arm to one of the ladies, the other gentlemen did the same, and they all streamed

¹ “Clynn's Annals.”

into the dining-room. The tables were prettily arranged with flowers, with the bar plate, and with a forest of glasses; then began a series of transactions of which our informant (for we merely give secondary evidence of the affair, it having taken place many years before we joined the Circuit) has no distinct recollection. We gather, however, that the luncheon was excellent, though we have been unable to learn the bill of fare. At half-past seven they adjourned to the ball-room, which was large and well lighted. Plenty of pretty faces adorned it; the floor was smooth, and the music had a festive accent so extremely inspiring, that in a moment the dancers were whirling through the mazes of the galop. Quadrilles, waltzes, and polkas, then in fashion, followed in quick succession. At eleven supper was announced, when one of Her Majesty's counsel said it was twenty-two o'clock; and it was whispered, that he had reached that point of enlargement of mind, and that development of visual organs, which is expressed by the term "seeing double!" He has since pretended that he was only reckoning the time in the Venetian manner! At midnight the party broke up; but as the wind was high upon the lake, the sails were furled, the oars put in requisition, and they returned to town by the light of the moon.

Several trials of interest occurred on the Circuit during those latter years, but for obvious reasons we refrain from laying them before our readers. We may mention, however, the cross-examination of a Scripture-reader by Mr. Walter Bourke, q.c.

"You are a Scripture-reader, you just told my learned friend?" The man replied that he was, and that he knew the Bible well.

Mr. Bourke then asked him to tell the names of the twelve apostles.

The witness, never contemplating such a line of cross-examination, appealed to the judge, who informed him that he must answer the question, and he commenced—"There was Simon Peter, and Paul his brother, and James and John, the two sons of Zebedee, and Matthew, Mark, Luke, and John;" and here the fellow, amid much laughter, said his memory did not serve him any farther. His knowledge of the names of the twelve tribes of Israel was of the same limited nature, and of course

Mr. Bourke, whilst denouncing him in unmeasured language, said that the charity of the Roman Church made ample provision for him, inasmuch as he belonged to that class comprised in the term "invincibly ignorant."

Of a like amusing nature was his cross-examination of a French *avocat*, in a well-known *will case*, in the course of which he took occasion to ask if he believed in the account given in the Book of Genesis of the creation of the world, and of man, and of death before the Fall, &c. The judge in vain sought to restrain him; but counsel, insisting on his right, the *avocat* replied that he did not; and he was then led on to tell his belief in the doctrine of progressive development, as laid down in M. de la Marque's theory. Counsel asked him to tell, in a few words, what that theory meant. The *avocat* then gave it as his belief that matter was eternal; that animal life had no existence for countless millions of years; that its first traces are to be found in the very lowest strata next above the granite rock, of which the flooring of the world is made; that those animals were molluscous creatures—worms, shell-fish, bivalves, and multivalves, such as oysters and lobsters—and that these, after other millions of millions of years, became developed into the spinal or vertebrated animals, such as quadrupeds, horses, asses, &c.; that they, too, became developed in long time into the quadrumana, such as monkeys, *apes*, &c., which in turn became further developed into man!

"And, Monsieur, am I to understand," said Mr. Bourke, "that your great ancestor was an *ass*, and your more immediate ancestor an *ape*?"

Loud laughter followed the question, in which the *avocat* heartily joined.

The Crown was represented on the Circuit during, and for several years after, the famine by Mr. George French, q.c., assistant barrister for the County of Longford, a very irritable old man, well grounded in the principles of the law, but who for forty years, it was said, had never troubled his head with reading the reports. Blackstone, Coke Littleton, perhaps Bracton, and the year books, were his learning in the law—and yet his county was a model one. The English laws of evidence he

looked upon (as a French lawyer would) as so much trash, and his only aim was to make out the truth, caring not a jot whether it was hearsay evidence or not. For a criminal to escape in Longford was an impossibility! Associated with him on the Circuit, as his junior, was Mr. Thomas Ellis, whose knowledge of case law was pretty accurate; and the sparring of those old men on Circuit afforded infinite amusement to the public and the bar. Mr. French's examinations were most amusing:—"Witness—what—is—your—name?" was his stereotyped first question. Next, if it was a murder case, "Did you know the deceased?" The witness replied that he did. Next question—which was sure to be followed by a loud—grunt—of disapprobation from Mr. Ellis—"Is he living or is he dead?"

A.D. 1850.—Mr. George Crawford, who had accepted a judgeship in South Australia, ceased to be a member of the Society. Immediately before leaving, he was entertained by the bar and presented with two silver claret jugs as a token of their esteem and regard.

A.D. 1851.—*Ward v. Freeman*.—This was a case of considerable importance, in relation to the protection of the judges for acts done by them at trials, and it occurred in this year on circuit, and in the County of Galway. A man named Thomas Cummins sold for £2 10s. a pig to his neighbour, John Ward, who immediately drove it to his home, but did not, though frequently pressed to do so, pay the price agreed on. Cummins issued a Civil Bill against him, and he took defence, on what ground we know not. The case, *Cummins v. Ward*, was tried before William Deane Freeman, Esq., assistant barrister of the County of Galway, who, on hearing the same, gave a decree in favour of the plaintiff, with 6s. costs. That Mr. Freeman must have been angry at the defence, would appear, firstly, by his refusing to receive Ward's appeal to the Judges of Assize for the County of Galway next then coming; secondly, by his refusing to stop all further proceedings on the decree, though Ward paid the costs allowed by the Act; thirdly, by his refusing to receive the recognizances for double the sum decreed against Ward; and fourthly, by his refusing to receive the affidavit of Ward's attorney. And so the proceedings on the decree were carried on, and the

execution was lodged with the shériff, who levied on the goods of Ward the sum of £2 10s., the price of the pig. For those several acts of commission and omission Ward brought an action in the Court of Queen's Bench against the assistant barrister, Mr Freeman, claiming damages ; and in his declaration he sets forth the several four allegations above-mentioned, which were in truth nothing more than repetitions of what the Act of 1796, constituting the Court of the assistant barrister, distinctly orders the assistant barrister to do, and which here he had not done. The plaintiff's declaration was filed, and no demurrer was taken by defendant thereto ; and the lawyers said that if no action lay, the defendant should have demurred ; for, if no action, why go to trial ? The defendant, in place of demurring, took defence, and the case did go to trial at the Galway Summer Assizes for 1851, and was tried by Mr. Justice Moore and a special jury. The attorney distinctly proved that the assistant barrister had acted as above set forth.

The case for the plaintiff closed, and counsel for the defendant, Mr. FitzGibbon, q.c., with whom was Mr. Henry Concannon, called on the learned judge to direct the jury to find for the defendant, inasmuch as no action lay against him acting in his judicial capacity.

Counsel for the plaintiff, Mr. Charles Blakeney, on the other hand, insisted that the assistant barrister, the defendant, on the evidence, had done those things which he ought not to have done, and had left undone those things which he ought to have done, and he (counsel) called on the judge to leave the evidence to the jury, and argued that if the jury believed the plaintiff's witnesses, he should direct them to find on the evidence.

Mr. Justice Moore told the jury that the assistant barrister was a judge of a Court of Record, and, as such, was not responsible in an action for any act or breach of duty done by him judicially at a trial. The jury, acting on that direction, found for the defendant. Counsel for the plaintiff then excepted to the learned judge's charge. The bill of exceptions was argued in the Court of Queen's Bench, and the judges were unanimous in upholding the verdict, and in approving of the direction of the judge at the trial. The exceptions were, therefore, overruled.

Still dissatisfied, counsel for the plaintiff brought a writ of error into the Court of Appeal, then, when fully constituted, consisting of the twelve judges, and known as the Exchequer Chamber. Four of the judges being absent, the Court consisted of eight judges. The writ of error was argued before them, and they were unanimous that "no action will lie against a judge of a Court of Record for any act done by him in the exercise of his judicial functions." But then the question arose whether the assistant barrister was acting in the exercise of his judicial functions. And four of their lordships held one way, and four held the other way. The Lord Chief Justice (Lefroy), Crompton, J., Moore, J., and Greene, B., held that the assistant barrister, acting as a judge of a Court of Record, in refusing to receive the appeal, acted judicially, and was not responsible in an action for such refusal; whilst Chief Justice Monahan, the Lord Chief Baron Pigot, Torrens, J., and Perrin, J., held that the assistant barrister, acting as a judge of a Court of Record, in refusing to receive the appeal, acted ministerially, and was responsible in an action for such refusal.

But five of the eight judges held that there was a mistrial, and that there should be a new trial, on the ground that evidence was gone into by the plaintiff to sustain his case, and that the judge was bound to leave the case to the jury, although he was of opinion that no cause of action was disclosed in the declaration; three of the judges, Lefroy, C.J., Moore, J., and Greene, B., *dissentientibus*.

The judgment of the Queen's Bench was therefore reversed, and what in Law-Latin is called a *venire de novo* was ordered—that is a new trial. From this order defendant appealed to the House of Lords; but before the cause was set down for a hearing, he died, and so the suit abated.¹

George French, Esq., q.c., father of the bar, grand-uncle of the first Lord De Freyne, in this year resigned the place he had so long filled, for the increasing load of life made it apparent that he was unequal to the task imposed on him of being Crown Prosecutor for the entire Circuit. He had gone 109 Circuits, and his temper was

¹ II. "Ir. Com. Law Rep.," p. 460.

becoming daily more and more irascible, especially if under examination was a Crown witness whose tender years would, perhaps, cause her to blush at the questions put by the aged counsel. "Pooh! this mock modesty," he'd exclaim to his own witness. The question was repeated in plainer English: the girl began to cry, and he began to curse. No theatrical exhibition was equal to it, especially if his junior, old Mr. Ellis, was there to take part in the exhibition. An address was drawn up and presented to the retiring father, which is as follows:—

"TO GEORGE FRENCH, ESQ., Q.C.

"DEAR SIR,—We, the members of the Connaught Bar Society, having received the announcement of your resignation of the office of father of our body, beg leave to express our deep regret at the severance of a tie which has bound us together for a long period of years, and to tender to you, in all sincerity, our warmest wishes for your happiness in your retirement.

"Signed on behalf of the bar,

"WILLIAM ARMSTRONG, Father.

"JOHN WILLIAM CARLETON, Secretary."

On the 22nd of December, 1851, Mr. Carleton presented the address, which Mr. French, overpowered with gratitude, received. The name of George French is still fresh amongst us. I never had the pleasure of seeing him on Circuit or at the bar, though I have many times seen him, the most tender-hearted of men, far advanced in old age, leaning on his servant-man, and showering pence amongst the beggars by whom he was invariably surrounded, and whom he was always cursing, "the curses of his honour being no harm." The retiring father gave up and confided to Mr. Carleton the golden snuff-box which had in 1846 been presented by Sergeant Warren to the Connaught bar. On one side are two hands clasped, and on the other—"J. W. to the Connaught Bar Society." A magnificent snuff-box, which would tempt anybody to take a pinch or two of snuff out of it.

The years 1851 and 1852 were disastrous to the Connaught Bar Society, so many men retired from its ranks. Thus Mr. J. B.

Miller, q.c., a County of Galway gentleman, we believe, having been appointed Librarian at the King's Inns, resigned his place in the Society. So also did Mr. Charles Granby Burke, another County of Galway gentleman, brother of the late Sir Thomas Burke, of Marble Hill, Bart., whose aunt Elizabeth was married to John Thomas, thirteenth Earl of Clanricarde. Mr. Charles Granby Burke retired, however, into a cosy berth, a Mastership of the Court of Common Pleas. Mr. William Dwyer Ferguson also retired into another equally comfortable but more laborious place, Registrar in the Court of Chancery. Mr. Abraham B. Fenton was also off the list. It may be with justice said that his was a warm berth, "Queen's Advocate in the Gambia," on the West Coast of Africa. It is stated that he applied for a knighthood on leaving for his distant station, but was refused, on the ground "that a knighthood had never been given to a Queen's Advocate in the Gambia except one, and that it was given to him because he was the only lawyer that ever returned alive." Encouraging for poor Fenton.

Much that would amuse or interest us now, connected with the Circuit, at the time of which we speak, is either forgotten, or a mere matter of tradition, because there were then no reports except those of the most important cases. Not so in later years; for the leading journals are now furnished with copious circuit notes, written by members of the bar, and of course more reliable and fuller than those in former times. And yet, even now, mistakes do occur in such reports. We remember an amusing instance, when one of the learned reporters, having been engaged in defending a prisoner indicted for larceny, entrusted the reporting of the case to a law student of the Queen's College, Galway, who happened to be sitting in the bar seats. The prisoner was found guilty, and sentenced to twelve months' imprisonment. The Court then rose, and the counsel consoled himself for his defeat with the reflection that his client richly deserved his sentence; but who can tell the amazement of that counsel on the next day when the morning papers arrived, and the report proved to be exactly the reverse of what occurred! It stated that "Mr. So-and-so, in an able speech, defended the prisoner, who was acquitted accordingly." In the bar room he was gently ridiculed, nay, was even charged with having furnished the report himself; jestingly, of course, for his brethren

of the bar knew well that a man of his retiring and modest habits would have a thousand times preferred never to see his name in print at all.

Until very lately, reporting by barristers was, as well as writing for the press, or for magazines, looked on as highly unprofessional, and on one of the English Circuits there was a positive rule against any barrister being engaged in such literary pursuits; when, however, it appeared that Lord Campbell had furnished the critiques on the theatre to a morning paper, and that other distinguished judges had once been reporters, the tide turned in favour of the new order of things. The leaders of the bar had once scorned to appear in print, while now they court it. We have heard of a barrister who, for some reason, was excluded by the reporters from their columns; whereupon he wrote the following parody, of which we only remember two verses, on the popular song, "Oh, no, they never mention her":—

"Oh, no, they never mention me,
My name is never heard;
The press has now refused to speak
That unimportant word.
From court to court I hurry me,
But sad is my regret,
For even should I win a fee,
No notice can I get.

"They bid me seek at common law
The business others gain;
But if I e'en tried Chancery,
My efforts would be vain.
'Tis true that many I behold,
Who by reporting get
What I ne'er could by pen or fee,
To my extreme regret.

Of unreported cases on the Circuit we shall mention one at which we were present, when Walter Bourke, Esq., Q.C., a good classical scholar, in his speech to a common and not very enlightened jury of Mayo, insisted that, according to the evidence, the prisoner was found in the commission of a certain crime, "*flagranto delictu*," as he purposely expressed it.

“What, Mr. Bourke, ‘*flagranto delictu*’? You surely must mean ‘*flagrante delicto*,’” said the judge.

Mr. Bourke replied that the jury would find he was right. The foreman thereupon nodded his approval as to the correctness of Mr. Bourke’s Latin, and said that it was evident his lordship was forgetting his Latin. Counsel next proceeded to quote a passage from “Herodotus—the great poet of the Empire of the West.” The judge must interrupt again. “Surely a scholar of your well-known attainments must be aware, Mr. Bourke, that Herodotus was not a poet, but a great historian.”

“Well, my lord, I will ask you to send this question also with the issue paper to the jury, and you will see that my fellow-countrymen of Mayo will find that I am correct in my observations concerning Herodotus.”

The jury again nodding their assent, Mr. Bourke went on, and won, we are told, a verdict from a jury, who felt that a Protestant judge had the unblushing effrontery to impugn the accuracy of a Catholic lawyer and of a Mayo man on a question which, for aught they knew, might have been very intimately connected with Church history!

In geographical science the bar were amused at a mistake made by one of their body, and nearly made by another—a mistake amongst the learned that can find a parallel in “The Winter’s Tale,” where Shakspeare speaks (Act iii., scene 3) of the sea shores of Bohemia. It appears that the owner of a vessel sailing between some of the ports of the Black Sea, and one of the Irish ports, brought an action against an insurance company to recover an insurance effected on the vessel and its cargo, all of which were lost on the homeward voyage. The captain was examined, and swore that the ship had been properly navigated, and that the crew behaved with “seaman-like sobriety;” that the vessel did not delay a moment, and, save that they put into Malta, they touched at no other place. The captain, on the cross-examination, reiterated what he had said on the direct, and he added that they just spent a night in Valetta.

“Oh,” said Mr. Concannon, the leading counsel for the plaintiff, in a stage whisper to his junior, “he has us there; the plaintiff is hit, for on the direct examination he told me he only spent one night in Malta, and now he admits he was in Valetta!”

"But," replies his junior, "is not Valetta the capital of Malta?"

"Now, are you sure of that, Michael?"

"Of course I am."

"My goodness!" said the other, "I'm so delighted to hear that!"

Hardly had this conversation terminated when the leading counsel for the defendant asked, "Did you not say to the counsel for the plaintiff, that you only called at Malta? Answer me, sir."

The witness replied, "I did."

"How, then, do you reconcile that statement with that which you now make, that you called at Valetta?" Here Mr. Concannon, for the plaintiff, in triumph sprung to his feet, "I thought, my lord," he said, "that every child in Court knew that Valetta was the capital of Malta;" and so saying he sat down, pleased beyond measure with himself, and with his lately acquired geographical information. The report of the case, too faithfully reported, appeared the next morning in the four Dublin daily papers, supplied, no doubt, by the four junior barristers on the Circuit, and who were somewhat profanely called "the Four Evangelists." Beyond all doubt the reports were refreshing and accurate; nevertheless they were displeasing to the critical eye of the going judge of assize, who wished all his profound admonitions and advices to the Grand Juries should be carefully reported. Now, one of those evangelists dined with the judges in Castlebar; and as the Record Judge in that town had been the Crown Judge in Sligo, and as the report of his address to that Grand Jury had omitted one or two elegantly turned periods, his lordship, when dinner was over, said, "Is it not strange that the Dublin morning papers cannot give an accurate report of what occurs? Their stupidity is marvellous." The evangelist sitting by, one of the most retiring of men, felt deeply the cut. But in a few days the same judge, addressing the County Galway Grand Jury, in language fashioned on the mould of Gibbon, as all his language was, concluded an oration with this deploring remark:—"The pillars of society are shaken, the needle has lost its polarity." Next day down came the morning papers, and all was accurately reported, save the last sentence, which was misreported by the stupid reporter, "The needle has lost its popularity."

Mr. Justice Ball, the going Judge of Assize—we forget the year—was trying a man accused of stealing cattle from off a farm in the County of Galway. Evidence of a former conviction was being given, and the counsel for the Crown, a Mr. Mat. Atkinson, said that he was about to examine witnesses to prove that the prisoner was a member of a lawless gang, which had at Clare-Galway attacked a convoy guarding the Indian meal, which he (counsel) pronounced *mail*. Counsel for the prisoner objected to the admission of such evidence.

“What,” inquired his lordship, who rejoiced in a little merriment, “attacked the Indian *mail*, and destroyed it near Clare-Galway?”

Counsel said that it was too true, that it would be proved that prisoner had cut open the bags, and made stirabout of the “*mail*.”

“God bless my soul! by what process of boiling could that be accomplished?” said the judge. “Why, this is most perplexing! I always thought the Indian mail came into Southampton.”

Shouts of laughter followed, and the judge, who had affected to mistake the provincial dialect of counsel, seemed greatly amused at the mistake. He disallowed the evidence, and the trial proceeded.

Unable to correct his provincial pronunciation, this member of the Circuit was, shortly previous to his death, addressing the Court in support of a plea which he had drawn to a summons and plaint, and which the plaintiff’s counsel, Mr. Frazer, of the North-east bar, sought to set aside as ambiguous and embarrassing. “My lord,” said the Connaught lawyer, “this is a good *play*,” meaning thereby *plea*. “What!” said his witty opponent; “I deny it’s a ‘play’ at all; it’s a ‘farce’!” Much merriment followed; the reason of which was manifest to all but to him who had been the cause of it.

For mirth and good-humour the Connaught Circuit was always remarkable; and amongst those who contributed by his wit, his learning, and his humour to make his brethren of the Circuit happy, was the late Walter Bourke, q.c., of Carrowkeel, who was head of an ancient Mayo family, and who joined the Connaught Bar Society in 1838. With the character of the Irish peasant he was familiar, and he could tell in a moment whether a witness was fencing or not on cross-examination. His knowledge of the Irish language, too, gave him a power over them, which others, ignorant

of that language, failed to command. It was on a summer's evening, at the assizes of Castlebar in 1867, that he took the arm of the writer of these pages, as he strolled across the Green to partake of the hospitality of the judges. On the way a countryman addressed him, and said—"Your honour, you are employed for me in that case of mine that's to be on to-morrow."

"Oh, Pat," said Walter, "is that yourself? I'll do my best for you, and I got your brief and your fee."

"Indeed," said Pat, "when my attorney tould me that I should hire out a counsellor, I tould him that the sorrow betther counsellor I could buy than yourself, and be-the same token I gave him three guineas for your honour."

"Oh, indeed; I got the money sure enough, Pat, and I'll make a right good three-guinea speech for you;" and we sauntered on.

We had not proceeded very far, when the man, in a very thoughtful mood, returned and asked—"About the three-guinea speech, your honour, would a four-guinea speech be a betther one?"

Walter, amused, answered the question by asking another—"Whether a three-guinea calf or a four-guinea calf was the better?" The client acknowledged that there was a great deal of sound sense in that question, and immediately handed him another guinea. The fellow then asked—"What's the price of the best speech out, where your honour would not be afeard of any man, ayther priest, parson, Methody praycher, judge, or jury?"

Walter, in a calculating mood, looked down to his boots, put up his eye-glass, and eyeing his client, informed him that "five guineas was the price of the best speech out, and that no man could make a better speech than that."

"Begorra, then, here is the balance of the five guineas; and let me see how you will give it, in style, to any man that daar say a word agin me."

Walter put the two guineas in his pocket, and wished him good evening, "As I am going," said he, "to dine with the judges."

"To dine with the judges!" said the man in amazement. "Is it in the parlour?" Walter assured him that it was. "And this other counsellor [meaning me] will he get leave to dine there also?" "Oh yes, Pat, if he behaves himself." "Oh, blessed Saint Agnes—wonders will never cease! Let me see now that you

sit next one of their lordships, and when you find him getting soft afther dinner, tell him all about my case ; and here, now, is another two guineas," which also Walter put in his pocket.

On the next day, while this case was being heard in the Record Court, the Crown Judge, taking his seat in the other Court, commenced business. "What noise is that?" said his lordship—"what noise can that be? Good gracious, Sub-Sheriff, will you cause silence to be kept?" "It's Mr. Walter Bourke, my lord, the Queen's Counsellor, that's making a speech in the other Court." "Oh, can that be possible? Will you go in and say that I shall feel obliged by his speaking a little lower?" The sheriff went in and delivered his message. "Ha, I see," said Walter; "tell his lordship that my client is down street, and I want him to hear me." Need it be told that loud laughter followed this amusing retort?

Of the further progress of the case we have only to add that Walter obtained a verdict, first having entertained the judge, the jury, the bar, and his client with as good a five-guinea speech as it was ever our happiness to hear him deliver. It is unnecessary to state that when the case had concluded, Mr. Bourke at once handed back the extra money which he, owing to his keen sense of the ludicrous, had taken from his client.

The ancient name of O'Connor is not frequently to be found on the Circuit roll, and when found, they appear to have had far from clannish ideas; on the contrary, they appeared to share in the propensities of the game-cock one to the other. Roderick O'Connor, of Miltown, County Roscommon, was on the Circuit from 1820 to 1849, whilst Mathew O'Connor, of Mount Druid, and of Mountjoy Square, Dublin, was on the Circuit from 1822 to 1846; and during the years that they were brother-circuiteers, they appeared to share in the antipathy of step-brothers. Wherefore this estrangement? All about Denis O'Connor dropping an "n" in the spelling of his name. Mathew O'Connor, who was grand-uncle to the present O'Conor Don, and who had been in early life a solicitor, and then became a barrister, was the author of several works conversant with Irish history; he was author of "Memoirs of the Irish Brigade," published in 1814, "History of the Irish Catholics," and several other works. But

wherefore the controversy between those learned disputants? It appears that O'Connor Don changed the spelling of his name to O'Conor. Immediately O'Connor of Miltown did the same, and this alteration offended not only O'Conor Don, but Mathew O'Conor; a discussion ensued, which was carried on in the columns of the public press. It appeared to be an acrimonious and an "endless" dispute, and, punning on the word, it was called the "N-less" correspondence. At the suggestion of some of the wise-heads, it was determined to refer the point in dispute to the arbitration of Ulster King-of-Arms. The question resolved itself into this—Was O'Conor of Miltown family of the same descent as that of the O'Conor Don? Sir Bernard Burke, with prudence, received the disputants, likely to become combatants, in separate apartments, and then, having adopted this wise precaution, he heard Mr. Arthur O'Conor on one side, and Mr. Roderick O'Conor on the other. Cartulleries of old monasteries, Indentures, Deeds-poll, and Wills were examined by the experienced and learned Ulster, and his decision was in effect that both families had a common ancestor, namely, Tordhellach O'Connor, who ascended the throne in Ireland in 1136; he had two sons living at his death—Roderick, the last monarch of Ireland, and Cathal of the red hand. Roderick having, as everybody knows, resigned the supreme monarchy, reserved to himself Connaught as an independent kingdom; from Roderick's brother, Cathal, is descended in a direct line the O'Conor Don. As to the spelling of O'Connor or O'Conor, Sir Bernard was of opinion that the two families might adopt either system, and that in times past the signatures were variously written one way or the other by the same writer.

Mr. Mathew O'Connor was counsel and held many briefs in a case still remembered on the Circuit as "Purcell's Acre"—an acre so worthless, that it was valued at next to nothing in the rate books of the Union of Castlebar. Nevertheless the question as to who was entitled to the fee thereof became and was the subject of action after action on the Circuit, in which special counsel, with their special retaining fees, came down at several assizes from Dublin, and were associated with the several lawyers of the Circuit in so unimportant a case. It appears that a Mr.

O'Connor, who lived near Elphin, was entitled to a small property in the neighbourhood of Castlebar. The Earl of Lucan was the owner of the surrounding country for miles and miles on every side of it; but this little property was an eyesore in its midst, and in course of time the tenants on both sides having destroyed the landmarks, led to a confusion of the boundaries, especially in that part of the estates which was the most worthless, and therefore the most neglected. A man named Purcell had been in the occupation of a piece of marshy bog, on which he had cut turf until it had ceased to yield even that product, and hence it was called “Purcell's Acre.” It was worth about five shillings a-year; but neither O'Connor nor Lord Lucan would allow that it was the property of the other, and accordingly actions of trespass were brought, and the venue then being local, the case could only be tried on the Circuit. Special counsel were brought down in the persons of Mr. Edward Pennefather, k.c., afterwards Chief Justice of the King's Bench, and Mr. Litton, k.c., afterwards Master in Chancery. Four times was the case tried by special jurors of the County of Mayo, who decided or refused to decide according as their fancies or prejudices dictated; and at last, after the expenditure of several thousands of pounds, victory declared in favour of the Earl of Lucan, who left the place derelict until recently, because, as a neighbouring peasant affirmed, “it wasn't fit to feed a snipe.”

The political were deepened by the religious strifes that prevailed throughout the Province of Connaught during the decade following the famine of 1847. Religious riots, assaults, and batteries were then the order of the day, and it was too often the case that the reverend theologians

“Proved their doctrines orthodox
By apostolic blows and knocks.”

The case of *Grady v. Hunt*¹ was an illustration of this principle. There a Mr. Edward Lombard Hunt, a magistrate living at Headford, in the County of Galway, committed a

¹ 7th Ir. Jurist, O. S.

shoeless boy named "Grady" "to prison until he should find bail" to keep the peace towards a Protestant clergyman whose field of action was at Shruel, on the borders of the County of Mayo. It appeared that the Irish Church Missions, at vast expense, kept up a staff of theological disputants, one of whom had no hesitation in denouncing the faith of Master Grady as idolatrous and damnable. The young personage, in return, not only "hooted, shouted, and otherwise terrified," but also "flung stones, brickbats, and other dangerous missiles" at the Rev. Divine, who thereupon swore informations against him. A warrant was issued for his arrest, and he was committed "until he should find bail," according to the express words then in use in the commission of the peace. Now, this committal might last during the remaining term of his natural life, for he might never find bail. Thereupon Mr. Coll Rochford, solicitor, by his counsel, applied in the Court of Queen's Bench for a *habeas corpus*, directed to the gaoler of the County Galway gaol, commanding him to bring up the body of young Grady before the Queen herself. The committal was held illegal, and the boy was discharged. A guardian *ad litem* being appointed, Grady brought an action in the Common Pleas against Mr. Hunt for false imprisonment, and for assault and battery; and it was alleged that those several acts were maliciously by the defendant done to the plaintiff; damage £500. To this summons and plaint it was pleaded, that the defendant was acting as a Justice of the Peace, and was protected, when acting as such, by a certain statute therein set forth. The case was tried at the Galway Assizes in 1855, when the learned judge told the jury that the defendant was acting in his magisterial capacity, as appeared by the evidence; and a verdict was directed for him. On the 2nd of November following, a new trial was moved for on the ground of misdirection of the learned judge; for that on the evidence it appeared that he was not acting within his jurisdiction as a magistrate. Thus, supposing he had ordered the boy to be transported, could it be pretended that such order was made, acting in his magisterial capacity? The Court acceded to this view of the case; a new trial was ordered, and the question resolved itself into one of damages. The case was tried

in Galway at the Summer Assizes, 1856, and a verdict was found for the plaintiff large enough to carry full costs.¹

The Connaught judges—those who had been elevated to the Bench from the Connaught Circuit—were averse to this element of religious strife being perpetually thrown into the jury-box; and we wish that it could be told that the counsel for the one party or the other were above availing themselves of such an aid to their winning a verdict for their clients. Mr. Justice Ball's ridicule of such an element was ceaseless and amusing. Thus, in an action tried at the Castlebar Summer Assizes, 1858, the junior counsel, opening the pleadings, said, "The plaintiff was one Patrick Murphy; the action was for excessive distress. The defendant was the Reverend Theophilus Sumner, D.D., a Protestant clergyman, resident in Cheltenham, in England. There are several counts, my lord, in the summons and plaint, the last of which is for the wrongful conversion of the plaintiff's cow." "Conversion of the plaintiff's cow," exclaimed the judge. "Converted the plaintiff's cow, did you say? Who effected this marvellous conversion?" "The reverend defendant, my lord." "Will counsel kindly read the count? this is a most miraculous conversion!" "And also," said the counsel, reading from his brief, "and also that defendant converted the plaintiff's cow to his own use." The judge, laughing immoderately, and perfectly pleased with his wit, confessed that he now understood it perfectly: great merriment of course prevailed in Court during the witty dulness of the funny judge.

Another of the judges in those years, a Catholic, and one of the ablest on the Bench, restrained, as far as in him lay, the introduction of the religious question into the box; but so deeply were the seeds of religious animosity sown, that in the smallest case, if there happened to be a difference of religion between the plaintiff and the defendant, or between the prosecutor and the prosecuted, it weighed with the jury. Where, therefore, on circuit in 1859, a prisoner was indicted for stealing a cow, the property of one Mathew Furlong, witnesses were put on the table to prove that the cow was one of a number of cows sold to the

¹ VII. Ir. Jur., O.S., Index. *Vid. Grady v. Hunt.*

prosecutor at a fair, that they were all marked with his stamp; M. F., that the cow in question was marked also, and was found months after in the prisoner's stable. Counsel for the prisoner stated that his clients knew nothing whatever of this animal being in his stable no more than did Benjamin, the son of Israel, know that the silver cup was in his sack;¹ and he put witnesses on the table, one of whom, he asked, "was not the prosecutor a Scripture-reader?" and on this important fact the learned counsel for the prisoner dwelt in his address to the jury.

The judge "could not comprehend what the religion of the prosecutor had to say to the simple issue that they had to try—was he guilty or not guilty of stealing the cow? and, gentlemen of the jury, there is not one of you that cares one pin what his religion, if any, may be."

The jury, after little hesitation, acquitted the prisoner.

The Judge—"Gentlemen, are you in earnest?—Discharge the prisoner!—Discharge him—turn him out of that." The prisoner was discharged, the judge exclaiming, "John, you stole the cow."

The Common Law Procedure Act, which came into operation in 1853, gave a deal of occupation to the bar, who were not slow in twisting, turning, and torturing every expression in its sections so as to make it harmonize, section after section, in one harmonious whole! It was in this state of things that William Dwyer Ferguson, Esq., LL.D., formerly of our Circuit, published a valuable commentary on that Act, which had been brought in by Mr. Whiteside. In 1859, Mr. Frazer, of the North-east Circuit, was moving before Mr. Justice Ball, with that very book in his hand, to change his own venue from Galway to Belfast. Now, Mr. Frazer, extremely witty, extremely irritable, and extremely eloquent, was ably described by the late Sergeant FitzGibbon as being afflicted with a "diarrhœa of words." In the case now before the judge, he struggled to rob the Connaught Circuit of a case which he meant to bestow upon his own; while Mr. Edmund Jordan was resolved not to permit such a confiscation of Circuit property if he could prevent it.

"On what grounds, Mr. Frazer," inquired the learned judge,

¹ Genesis xliv. 12.

“do you seek to change the venue you have laid in your summons and plaint?”

“I was about unfolding to your lordship the grounds upon which my application was grounded, when your lordship was kind enough to interrupt me. I move on the affidavit of my attorney, who swears that defendant, Mr. Jordan’s client, is a tailor, and the action is brought against him for furiously driving. This was not the case of a tailor on horseback: it was an action for driving over the plaintiff’s wife to the plaintiff’s damage of £500. There are several counts: first, that defendant drove a certain horse that he knew to be a wild, furious, and unmanageable runaway, upon a certain day, upon, against, and over plaintiff’s wife. There was another count for driving a certain horse that was not an unmanageable runaway; but defendant with malice aforethought drove the same upon, against, and over plaintiff’s wife. Then there was a count for that the defendant did not drive the horse at all, but that his servant drove it, knowing the same to be a runaway and unmanageable, upon, against, and over the plaintiff’s wife; and there was a count that the defendant, by his servant, with malice aforethought, drove the horse which was manageable upon, over, and against the plaintiff’s said wife; and there was a count for an assault, and a count for special damage, that she was knocked down, whereby she became sick, sore, and disabled; and that the plaintiff, who lost her society, was thereby put to divers expenses in effecting a cure of his said wife, who thenceforward became permanently disabled; and, lastly, there was a count on an account stated, every count varying the cause of action, but all the varying counts agreeing in a marvellous agreement that the damages were £500. To this plaint the defendant pleaded a score of defences, called traverses or denials, and a special plea of contributory negligence, that plaintiff’s wife crossed a certain street or other highway from one side thereof to the other, and that she did not cross at the crossing. Mr. Justice Ball begged of Mr. Jordan to inform the Court whether the cases in the books went so far as to lay down the proposition that the defendant might drive over the plaintiff’s wife with impunity, because she was not on the crossing?

Mr. Frazer felt grateful to his lordship for this second and seasonable interruption. He would now proceed with his motion to have the venue changed, on the ground of the great influence in the town of Galway of this tailor, to whom many an account was due by those that would be on the jury.

Mr. Justice Ball.—“Oh, no doubt, Mr. Taylor, of Castle Taylor, is a person of great influence in the west, a magistrate; and a deputy lieutenant of the County of Galway.”

Mr. Frazer did not say the defendant was a magistrate or deputy lieutenant, or that he was a Mr. Taylor at all. He was a shrewd tailor by trade.

Judge Ball.—“Oh, *The Galway Tailor's Case!* Was not there a case in 6th ‘Coke's Reports’ called *The Ipswich Tailors' Case?* And wasn't there a case in the books called, *The Six Carpenters' Case?* Where do the witnesses, the plaintiff, and defendant reside?”

Mr. Frazer.—“Galway, my lord.”

“And the cause of action arose in Galway. Now, have you any case to show that you cannot get a fair trial in Galway where a tailor is defendant?”

“We insist, my lord, that it is the plaintiff's prerogative to lay the venue wherever he chooses. We now choose Belfast, and there were cases reported in ‘The Irish Jurist’ on that very point, and decided in this very Court, my lord.” Now, it did so happen that in that Court, some time previously, when these decisions were made, there were two judges who had since died, to whose decisions very little weight was attached, and whose places were then filled by very able men, viz.—the Right Hon. William Keogh and Mr. Justice Christian.

So Judge Ball, again interrupting, inquired—“Who the judges were who had made those decisions? Was the Court constituted then as it is now?”

“No, my lord,” replied the irritated Frazer; “two of your lordship's brethren, who made those decisions, upon which I rely, have long since left for regions of immortal bliss, where amongst the angelic choirs they sing eternal hallelujahs in a never-ending chorus, which charming society, I trust, it will be long before your lordship is called on to join.” Here shouts of laughter shook the Court.

"Oh," said the judge, in a subdued and wailing tone, shaking at the same time his head, "the musical performances of my *quondam* brethren." A matter-of-fact old counsellor here inquired of a learned friend sitting near him "what it was all about?" He had been listening attentively to the unsustainable motion, and could see nothing to be laughed at in it. Whereupon he was informed that Mr. Frazer had in effect told the judge that he wished he was gone to heaven. "No, but did he say that?" was the stupid rejoinder; and then he began to laugh too. The motion was refused with costs.

At the Spring Assizes of the same year, Mr. Justice Ball was the Crown Judge in Roscommon. A prisoner was there indicted for "Rape," and the Grand Jury had found true bills. On the case being called on, counsel for the prisoner rose and said that his lordship would not be troubled with this case.

Mr. Justice Ball.—"Not troubled with this case! Why, the informations I have perused disclose as barbarous a state of society as could be found amongst the savages of Ohwhyhee. Are you going to plead guilty?"

"Well, my lord, assuming, but not admitting, that we did rape the girl, we are now in a position to marry her, and thus bring to a happy termination our ill-advised proceedings."

"Oh," exclaimed the learned judge, "the ends of justice are not, and must not, be frustrated."

Counsel for the Crown was satisfied to allow a marriage to be performed between the prisoner at the bar and the prosecutrix, within the walls of the prison. A priest could be easily had; and if once they were husband and wife, he did not see his way to make her evidence admissible as against him. The whole affair arose out of a scrimmage at a wake.

"A scrimmage," said the judge, in profound thought, "what's a scrimmage? I don't remember to have seen the word in the books."

Counsel for the Crown.—"A scrimmage, if your lordship pleases, was a sort of a pulling and dragging match, and tumbling this way and that, and may be the other." His lordship, writing "this way and that way," and then called out, "And do I understand you to say 'may be the other'? I protest, eh!"

Counsel for the prisoner would "undertake to explain what a scrimmage meant. A scrimmage may be defined to be a rookawn." "Eh," said the judge. "A scrimmage in this case took place owing to a general mêlée [which he pronounced maley] being there."

The Judge.—"A what?" "A General Maley, my lord."

Mr. Justice Ball, bewildered.—"God bless my soul! My old friend General Maley at a wake, and kicking up a row. Oh, this is alarming. Oh [shaking his head], did I ever expect?"

Counsel.—"Oh, maley [mêlée] is French; a French word, if your lordship pleases."

"What, a French General, a General Maley, the subject of a neighbouring Emperor, in amity with our sovereign, committing breaches of the peace, leading to a felony, at a wake. Oh! this is an offence against the comity of nations. Let the Attorney-General be at once communicated with. Crier, call the Attorney-General!" All this took place amidst roars of laughter, in which his lordship heartily joined, as soon as he allowed himself to appear to comprehend the real state of affairs.

The judge entertained on that night many of the bar; and need it be told that General Maley's case was related to his brother judge, who was greatly amused? It so happened that amongst the company was what might be called a black-letter lawyer, one who had been remarkable for a hereditary antipathy to soap, and who looked on tubs as an infatuation. He had been presented at the Vatican, but unfortunately was not operated upon by Pius IX., when his Holiness, at the high altar of St. Peter's, washed the feet of the many who availed themselves of that opportunity. He was now complaining of lumbago, for which Mr. Justice Ball prescribed: "to take a warm drink going to bed, and bathe the feet." Counsel would take a hot tumbler, but he had no faith in bathing the feet; he thought it was nothing more nor less than "washing the feet." Mr. Justice Ball "admitted that it was open to that objection," and we all laughed excessively, and thought it so clever. The motions from the Connaught Circuit in Dublin, while calculated to amuse the judge, too often perhaps disclosed a state of society widely different from the present, when the landlord looked on the tenant, and the tenant looked on the landlord, as members of one great family, who were each bound to protect the other. Woe to the

process-server that was then seen lurking in the woods near the "big house;" and woe to him that would attempt to serve the "poor masther with a paper out of the Coorts." Affidavits after affidavits have been filed and briefed, and read and dwelt on by counsel without turning a muscle in his countenance, disclosing the courage and bravery of the process-server; how he opposed force to force; how he was stopped by the gate-keeper of the grand gate, and how "he *gently* amoved him, and knocked him down, using no more force than was necessary." Motions, therefore, to substitute service of the writ were of everyday occurrence. Thus in the case of *Sharper v. Blake*, in the Common Pleas, "counsel applied for an order that service of the writ by serving the defendant by two letters through the post, one registered and the other unregistered, and by posting copies of the writ on defendant's hall-door, upon the door of the police-barrack, and upon the gates of the Catholic and Protestant Churches of the parish, be deemed good service. Counsel moved on the affidavit of the process-server, which, after giving a historical account of his hair-breadth escapes in coming through the demesne, thus, my lord, proceeds:—'And this deponent further saith, that on arriving at the house of the said defendant, situate in the County of Galway aforesaid, for the purpose of personally serving him with the said writ, he the said deponent knocked three several times at the outer, commonly called the hall-door, but could not obtain admittance; whereupon this deponent was proceeding to knock a fourth time, when a man, to this deponent unknown, holding in his hand a musket or blunderbuss, loaded with balls or slugs, as this deponent has since heard and verily believes, appeared at one of the upper windows of said house, and presenting said musket or blunderbuss at this deponent, threatened 'that if this deponent did not instantly retire, he would send this deponent's soul to hell,' which this deponent verily believes he would have done had not this deponent precipitately escaped.'" The motion was granted accordingly, and the proceedings proceeded; but what on earth was then the use of motions, and verdicts, and judgments, and orders, if the sheriff, in league with the landlord, would not execute the execution, as may be gathered from the following letter from the sub-sheriff of another Connaught County to the wife of the landlord, acknowledging to have received a bribe of a couple of bullocks?

"DEAR MADAM,—I have by this post received the two writs as expected from Dublin. I settled the execution against your husband. I received the two bullocks; but as cattle are down, there is a balance due.

"A Dublin wine merchant has just handed me an execution for £617, and insists upon accompanying me to your place. I have, therefore, named Wednesday, on which day you will please have the doors closed against us. As the plaintiff may again be officious, I would recommend his being *ducked* when returning; and a city bailiff, whom you will know by his having a scorbutic face, and a yellow waistcoat, should, for many reasons, be corrected. Pray take care the boys don't go too far, as manslaughter, under the late Act, is now a transportable felony. Tell your uncle Ulic I have returned *non est inventus* to his three last, but he must not *show*. After we return *nulla bona*, on Wednesday next, I will come out and arrange matters.

"Believe me, my dear Madam, truly yours,

"A. B., Sub-Sheriff."

Everyone at the bar dinner at Parry's Hotel, Salthill, prior to the Summer Assizes of this year, was sorry when they heard that Mr. Justice Ball would not go the Connaught Circuit, or go circuit at all at the approaching Summer Assizes. In fact, it chanced that by the advice of his physicians he had left Kingstown the evening of the dinner, at seven o'clock, by mail steamer for Holyhead, where he would arrive about eleven. Now, the secretary of the bar, when proposing, according to custom, the health of the judges, read a letter of apology from his lordship, who was then, it being half-past nine, "half seas over." The joke was well received.

An amusing cross-examination of a doctor took place at the Summer Assizes of Castlebar in this year. The trial was one of little or no interest; but amongst the Crown witnesses was a doctor, a fussy little man, with a small head, and a great amount of vanity, and his answers exactly suited the case for the Crown.

Mr. Bourke, Q.C., leading counsel for the prisoner—"Am I right, doctor, that you are known to be a man of great ability?"

The doctor admitted that he "always was and now is a man of unexceptional abilities; in fact, his mind [with a significant wink] was in the right place."

Mr. Bourke, Q.C., inquired where was the right place for the mind to have place in? The doctor replied, in the brains.

Mr. Bourke, Q.C.—"And where are the brains?" "In the head, to be sure; where else would you have them?"

Mr. Bourke, Q.C., looking at the witness's hat, which was of remarkably small dimensions, "And that is your small hat, which spans within its ambit your smaller head which spans within its ambit your smaller brains. Impossible, sir—impossible. Everyone in Castlebar knows that the little doctor has more brains than half the County of Mayo put together. Now, am I right in that?"

Witness admitted the truth of what everybody knew.

Mr. Bourke, Q.C.—"Is it not the case that the heart, which is usually at the left side of spinal column, is to be found unusually at the right side of the said column? Look at this book, sir," handing witness "Taylor's Medical Jurisprudence," p. 328.

"Yes, that is so."

Mr. Bourke, Q.C.—"And now, sir, by that process of mathematical reasoning, of which you are such a master, if the heart can exist at the wrong side of the spinal column, may not the brain also, in great part, exist at the wrong side of the same column?"

"Quite so."

Mr. Bourke, Q.C.—"And your brains, which admittedly cannot have room in that small skull, which fits in that small hat, must exist on the wrong side of the spinal column."

"Well, ye—ye—yas—yes."

Mr. Bourke, Q.C.—"Don't be hesitating, sir. Is not the spinal cord, called the *medulla oblongata*, a continuation of the cerebral mass called the brain, through the vertebræ from the top to the—eh—ah—other end?"

The Doctor.—"Of course, that is so."

Mr. Bourke, Q.C.—"And your brains, which cannot have place at the top, must have place at the—other end? Do you swear that?"

The Doctor (reddening, and completely puzzled by the un-

seemly laughter that the audience, forgetful of the dignity of the place, indulged in) replied—"Yes, I do; I—do swear that—I swear that—my brains are—situate in great part in the spine, as in every vertebrated animal."

"And do you swear to my lord and the jury that your brains are down there in your—eh—ah?" "Yes, I do. They are there, of course. I swear my brains are in my—eh—ah!"

The learned baron, convulsed with laughter, regretted he had not the power of insisting that Mr. Bourke's questions should be veiled in the obscurity of a learned language. He apprehended that the witness might retire.

The Doctor then rose to retire; but in descending, he slipped, and fell into a sitting position on the stairs of the witness chair.

Mr. Bourke, Q.C.—In great alarm, and amid much merriment: "Take care, doctor, or you'll knock out every one of your brains if you fall down on them that way."

In the obituary columns of the legal periodicals of 1862 is noticed the death of Philip Cecil Crampton, one of the judges of the Court of Queen's Bench. Mr. Justice Crampton sprang from a very ancient race; he was a native of the parish of Headford, of which his father and his grandfather had been successively rectors. The name Cecil he took from his maternal ancestor, Cecil Lord Burleigh, minister to Queen Elizabeth. In Trinity College, Mr. Crampton had taken honours—scholarship, a fellowship, and was for a long time Professor of Law in that university. On his call to the bar, he selected in 1811 the Connaught Circuit. Though the Tories were then in the ascendant (for their long reign lasted, with the exception of the year 1806, through six-and-forty years), and though the Whigs were in the cold shade of opposition, he entered public life under the banner of the latter; and, consequently, on the overthrow of the Wellington administration in 1830, his fidelity and his talents were rewarded by Earl Grey with the Solicitor-Generalship for Ireland. He then resigned his place on the Connaught Circuit, where he had long been in extensive, if not in leading, business. Why Mr. Blackburne, a noted Conservative, was then made Attorney-General, no man could tell.

In the summer of 1834, Mr. Justice Jebb died, and a vacancy

was thereby created in the King's Bench. Mr. Blackburne was, as a matter of course, offered the place; his patent was made out, and it only awaited the royal signature to complete the appointment. Lord Melbourne, however, anxious for the assistance of so able an adviser, induced him, on the distinct promise of the first "chief" place that fell vacant, to forego his claims to the judgeship. This arrangement being made, Mr. Crampton was noiselessly appointed. The appointment, however, deeply offended O'Connell, who was arguing a case in the King's Bench, when a paper was slipped into his hand; he took it up, read it, and in the middle of his argument, laughingly exclaimed: "And so Philip Crampton is Judge. Well! well! well!" Crampton never forgave the exclamation. On the 9th of December, 1834, the Whigs went out, and the Tories came into office; and Mr. Blackburne, who in the morning was Attorney-General to the outgoing, in the evening was Attorney-General to the incoming administration of Sir Robert Peel. Their power, however, was of short duration. On the 7th of the following April, a hostile vote on the Irish Church displaced them, and Lord Melbourne returned, but not Mr. Blackburne, to office. Mr. Crampton contrived frequently to go the Connaught Circuit, generally stopping at Cahermorris, his brother's place, near Headford, on the way from Castlebar to Galway; and with the judge travelled his major-domo, Paddy Murphy, an old follower of the family. He was quaint, witty, and amusing, and held on religious and theological speculations views diametrically opposite to those of his master. On the vexed question of teetotalism, they also differed, the one regarding spirituous liquors as the curse of the world, while the other regarded the same compound as its blessing. Whilst the judge denounced the soul-destroying beverage, which was rejected by the very brutes, the major-domo, on the contrary, was far from calling that beverage a soul-destroyer; for, "at no time, could he remember saying the 'Act of Contrition' with such fervour as when he had a sup in; and as for the poor brutes, sure if they had an ounce of sense in their heads, it wasn't water they'd be after dhrinking." Thus it was that the controversy, long before Father Mathew's time, waxed warm; and at last the judge gave orders that his richly-stored cellar was to be destroyed. "Oh," says

Paddy, "there's the plugs drawn out of the hogshead, and the blessed dhrink running all about the country. Sure if he was a judge twenty times over, he must have a hog's head on his shoulders that would do the like of that, and the poor wife and myself ordered to take stimulants whenever we can get them—Augh!"

The judge did, no doubt, look with a horror, increasing with increasing age, on intoxicating drinks; and though a true believer in the doctrines and teachings of St. Paul, yet never would he follow the advice given by him in the 23rd verse of the 5th chapter of his first Epistle to Timothy, "Drink no longer water, but use a little wine for thy stomach's sake." Drinking and carousing he knew had brought ruin on many an ancient family in his native county.

The judge had an inveterate habit of nodding his head at counsel arguing before the Court. "Go on, Mr. Cooper," said Mr. Justice Burton; "why do you thus stop suddenly in the middle of your argument?" "I really can't, my lord, proceed, while Judge Crampton is nodding his head at me; and the smack of his lips every five minutes is like the uncorking of a bottle;" and so it was.

Judge Crampton, a most polished gentleman, far from being incensed at the rudeness of the lawyer, said, "He was really not aware of these his peculiarities, and he felt grateful for the rebuke; but no man is conscious of his own peculiarities."

In going the Western Circuit, he observed that the obligation of oaths was of trifling value with too many of the humbler classes. Cases of determined perjury were of everyday occurrence; and he observed that an adjuration on the holy evangelists was considered far inferior in solemnity to one upon the priest's vestments; but whether there be any regular formula to be observed in the swearing of the western peasants, with the certainty of ensuring truth, he failed to find out. Oaths, he thought, like adjectives, have, with the ignorant peasantry, three degrees of value—the positive, the comparative, and the superlative; the book, the vestment, and the skull; and nothing was more common than to hear a witness sworn on the holy evangelists offer to fortify

his doubtful evidence by taking the vestment, though the vestment is not as conclusive as the skull.

Mr. Justice Crampton was a painstaking judge. At the close of his life he was considered to have gone over to the Tories. Heart and soul he was a supporter of that church in which his father and grandfather had been, as well as his brother, clergymen. Old age, with its infirmities, was now heavy on the judge. He was in 1859 in his seventy-eighth year, and he resolved to retire from the fatigues of public life. Valedictory addresses were presented to him, and Mr. Whiteside, then Attorney-General, spoke the farewell of the bar.

Mr. Justice Crampton concluded a touching reply by saying :—
“It is better in my advancing years to make way for younger and abler men, and it is time that I should take a little repose, a little rest, before I enter on that rest that never ends!” He then retired into private life, and died in 1862, being in his eighty-first year, leaving one son, at whose early death his estates devolved on the judge’s nephew, Mr. George Ribton Crampton, long a member of the Connaught Circuit, and one whom I am happy to count as one of my old and valued friends.

Amongst those who afforded me infinite amusement and instruction was Walter Bourke, q.c. The first time I heard him speak was on my probation Circuit; and certainly his drollery, information, and good-nature, won for him many friends. A great admirer of the Right Honourable Abraham Brewster, he saw himself in 1860 associated with that learned gentleman, who came down to Castlebar as special counsel in the case of *Little and Clarke* versus *The Hon. Edward Wingfield and others*; the question at issue being whether the plaintiffs had, as they insisted they had, the exclusive right of fishing in the River Moy—a right which extended not only to the channel, which the defendant did not deny, but embraced the right of fishing over every square yard that was covered with water at the flow of the tide between Ballina and the sea. To prove this, much of the unhappy history of the country was raked up, beginning with the Inquisition of 1609, and the grant of the fishery by James I. to Lord Delvin; then the forfeitures and confiscations of 1641, and subsequent patent by

Charles II. to Sir Charles Preston, from whom the plaintiffs claimed their title. The defendants insisted on a several fishery merely on the shore of his own land, opposite Scurramore, where, as Mr. FitzGibbon, q.c., counsel for the principal defendant, stated, "the salmon come, leaving the deep bed of the river, and hugged in close to the shore, because the porpoises pursue them in millions, and the salmon avoid them by getting into shallow water." The defendants insisted that the Wingfields were in the enjoyment of the lands from Scurramore to a point at Poolraine from 1670 to 1857, and that they had a decree from the Court of Claims confirming their title in the reign of Charles II., but no mention in the grant of "the title to the fishery," though since 1788 to the present time they fished without hindrance or interruption. The trial lasted several days. For the plaintiff, and with the Right Hon. Abraham Brewster, q.c., were Mr. Walter Bourke, q.c., Messrs. Edward Beytagh, and George Orme Malley, instructed by Mr. Thomas MacAndrew. For the defendant (Colonel Wingfield) there appeared Messrs. Gerald FitzGibbon, q.c., James Robinson, q.c., and John William Carleton, instructed by the Messrs. Reeves. Mr. Patrick Blake, q.c., and Mr. William J. Sidney, instructed by Mr. Charles Sedley, were for the other defendants.

Mr. Robinson, q.c., "having," to use the words of Mr. Justice Perrin, who tried the case, "exhausted every argument that could be brought to bear on the question in support of his contention, and having left no stone unturned," the reply fell to Mr. Walter Bourke, q.c., who always spoke sitting down. He commenced by telling the jury what "a grand comparison he had that morning heard drawn by a sharp, shrewd, intelligent country fellow, between the counsellors as they were going into Court. "What do you think, Pat, of Mr. Brewster, that came down for the Littles, all the way from Dublin?" says one to the other. "Then the sorrow much I think of him," says Pat [here Mr. Brewster, slightly colouring, looked over his spectacles at Mr. Bourke]; "the sorrow much I think of him; sure he was only a couple of hours spaykin' [speaking], and sure, instead of having an English accent, he spoke as plain and as simple as I would myself, and sure there isn't a child in Coort that wouldn't understand him; and sure you wouldn't think he was a scholar at all; but give me my own Walter

Bourke, that would spake from ten o'clock in the morning till ten o'clock at night, and except the judge, who is a fine scholar, of coorse, there is neither man, woman, nor child, could make out what in the world it was all about, the fine English, and Mr. Walsh, the schoolmaster, counted six syllables in one word of his, and sometimes Latin. That's the man for my money!" Mr. Brewster was infinitely amused, and Mr. Bourke continued, that "he entirely agreed with the countryman that any child in Court could now understand Mr. Brewster's statement, which he (Mr. Bourke) called a magnificent one, and which unfolded the title plainly and simply. The piscatory episode of Mr. FitzGibbon, and the wars between the salmon and the porpoise, he had nothing to do with, neither would he apply himself to the reasons that so weighed on the salmon's mind as to influence them to make such a strategical move in their retreat from out of the way of the pursuing porpoises. He would stand by his patents, which granted him the fishing of the River Moy, and let the defendant stand on his patent, which subsequently granted him the lands—a grant which did not, and could not, entrench on the preceding one at all. But then they insist on the other side that they fished on the shallow waters, and that is all. Why, it is proved to you that the best part of the fishing is in the shallow water, because the salmon goes up the shallows. It is a serious thing to say—looking at it—how, when the tide comes there, and the fishing has been granted, that the water which is shallow, and where the fish would naturally come, should be excluded from the Moy fishing. Oh! but—without a title—they say they were permitted by us to fish—they trust to evidence of usurpation. Now I see men on that jury who possess paternal property. I will ask them a simple question. Suppose I wish to go into their estates to sport. The counsellor goes, he is well received, he is entertained with hospitality; he returns again, and is again well received; he goes on thus from year to year. No objection is made. At last the counsellor returns, and brings with him his friend FitzGibbon, who, though a bad shot, fancies sport, and his friend Robinson also, and in addition his friend Blake; and so they come in a body to take all the game. Never was there such a tumult—never such a ruction. They are going to stop all the counsellors; but the counsellor says:—

‘ This is all very well, I have a better title than you.’ One landlord says—‘ Here is my Incumbered Estates Court title, giving me the game.’ The counsellor answers—‘ Pooh ! that is nothing but old waste paper. I have here sportsmen, dog-boys, *et cetera*, and I will produce my title of user.’ ” Mr. Bourke, q.c., then commented on his deduction of title from the grantees in the reign of Charles II., and closed a speech of much drollery by asking a verdict for his client. The jury found for the plaintiff, thus confirming their title to the fishing of the entire of the River Moy.

CHAPTER X.



AMONGST those who held foremost place on the Circuit during the third and fourth decades of the present century, was Richard Keatinge, who has lately died. His father, Maurice Keatinge, was a barrister, and he of whom we write was born in 1792, and was called to the bar in his twenty-second year. In 1814 he joined the Connaught bar. Some of the important cases in which he was engaged we have already given, but others we have omitted, because they occurred too near to the present time. Mr. Keatinge, who was a vehement speaker, was accused of being tautological in his addresses to the juries—a fault on the right side—especially as he veiled in varied language the same reasonings and arguments; he thus in the end made the stupidest and most inexperienced of jurors understand, however complex, the case. He was bitterly opposed, in religion as in politics, to Catholic Emancipation; but his feelings weighed not a feather in the balance, when he was called on to act as an assessor or judge, as he was at the memorable Clare election of 1828. Of the political excitement of that memorable year we are not about to speak, for its history is known of by all men. Suffice it here to say, that it was the genius of O'Connell carried Catholic Emancipation. The agitation had assumed under his guidance an irresistible force, and his impassioned eloquence produced an impression on assembled multitudes like that created by the greatest orators of the world; for his influence over the people rivalled that of Demosthenes in Athens, Cicero in Rome, or Mirabeau in France. The Tory ministry, which, under the leadership of the Duke of Wellington, came into office on the 26th of January, 1828, felt the force of his power. The new Cabinet was not long formed when a vacancy occurred in the Presidency

of the Board of Trade, and one of the most advanced of the advocates for Emancipation, the Right Hon. Vesey FitzGerald, M.P. for the County of Clare, was appointed to the place. This appointment created a vacancy in the representation of that county, and a writ for a new election was issued. At the hustings in Ennis there were two candidates; one, the Cabinet Minister, Mr. FitzGerald, and the other Daniel O'Connell. Thousands upon thousands, headed by the Catholic clergy, were assembled in Ennis on the day of the nomination. Mr. O'Connell, from the spot on which his column now stands, harangued multitudes, who seemed to roll like waves in a storm, under the magic influence of his eloquence. The sheriff had retained, as we have said, Mr. Keatinge as his assessor, and here that able lawyer distinguished himself. Whatever his private feelings were, they were concealed, even from himself, on that trying occasion. Mr. Dogherty was counsel for Mr. FitzGerald, and Mr. Richard Lalor Sheil¹ for Mr. O'Connell. Charges of undue influence were every moment being made on the one side, and repelled on the other, and the case of *Ashby v. White* ("Smith's Leading Cases"), which became even as a household word, at that time, amongst the unlearned, was hurled by the advocates *in terrorem* at the assessor; but his well-balanced judgment directed the sheriff through the difficulties of the occasion. At one time an attorney employed by Mr. FitzGerald rushed in and exclaimed that a priest was terrifying the voters. Counsel for Mr. O'Connell defied the attorney to make out the charge. The assessor very properly required that the priest should attend, and, behold, Father Murphy, of Corofin: his solemn and spectral aspect, for such it was, struck everybody as he advanced with fearlessness to the bar, behind which the sheriff and Mr. Keatinge were seated, and inquired, with a smile of ghastly derision, what the charge was which had been preferred against him. "You were looking at my voters," cried the attorney. "But I said nothing," replied the priest; "and I suppose that I am to be permitted to look at my parishioners." "Not with such a face as that," cried Mr. Dogherty, Mr. FitzGerald's counsel. "This," writes Mr. Sheil, "produced a loud

¹ "Sheil's Legal and Political Sketches," Vol. ii., p. 114-135.

laugh, for certainly the countenance of Father Murphy was fraught with no ordinary terror; 'and this then,' exclaimed Mr. O'Connell's counsel, 'is the charge you bring against the priest?' At this instant one of the agents of Mr. O'Connell precipitated himself into the room, and cried out, 'Mr. Assessor, we have no fair play; Mr. Singleton is frightening his tenants; he caught hold of one of them just now, and is threatening vengeance against him.' This accusation came admirably apropos. 'What,' exclaimed the advocate of Mr. O'Connell, 'is this to be endured? Do we live in a free country, and under a constitution? Is a landlord to commit a battery with impunity? and is a priest to be indicted for physiognomy, and to be found guilty of a look?' Thus a valuable set-off against Father Murphy's eye-brows was obtained. Mr. Keatinge decided that if either a priest or a landlord interrupted the poll, they should be indiscriminately committed, but thought the present was a case only for admonition. "Father Murphy was accordingly restored to his physiognomical functions." And thus from day to day, for six days, the election went on. Treating at elections was not then, as it is now, contrary to law: and accordingly the electors, patriots, counsellors, attorneys, and agents, were piled upon each other when partaking of the election hospitality of Mr. O'Connell.

The polling terminated on the 5th of July, 1828. The votes were—for O'Connell, 2057; for FitzGerald, 982. Majority, 1075. And now the question was argued before the assessor, whether Mr. O'Connell, being a Roman Catholic, could be legally returned. "The assessor, Mr. Richard Keatinge," writes Mr. Richard Lalor Sheil, "after an excellent argument, instructed the sheriff that the election was valid, and to return Mr. O'Connell as duly elected, leaving it to be decided by the House of Commons what oaths were necessary to qualify a Roman Catholic to sit and vote; and he was accordingly returned.

The sequel of the Clare election is briefly this. In the interval between Mr. O'Connell's return, and the meeting of Parliament, on the 5th of February, 1829, the cabinet yielded, and the Catholic Relief Bill, on the 13th of April, 1829, was passed. Mr. O'Connell then presented himself in the House of Commons, claiming to sit and vote under the provisions of the new law,

having been duly elected. He argued his own case with consummate ability ; but it was decided, that “ having been returned before the commencement of the Act, he was not entitled to sit or vote without taking the oath of supremacy.” A new writ was therefore ordered for the County of Clare. Mr. Keatinge was again at his post as assessor, but there was nothing for him to do, and Mr. O’Connell was returned without opposition.

Of Mr. Keatinge’s further career, we have only to state that in 1840 his name disappears from the Circuit Roll, that in 1842 he was appointed Sergeant by the Conservative Government, and in the following year was raised to the Bench of the Prerogative Court, on the abolition of which he was appointed Judge of the Court of Probate in 1857, which post he resigned in 1868. He died on the 9th of February, 1876.

A.D. 1878.—James Henry Monahan.—On a day in the month of December in this year, was announced, in language of sorrow, the death of this distinguished lawyer, who, for eighteen years, had travelled the Connaught Circuit. Born at Eyrecourt, in the County of Galway, in the second year of the present century, he had passed the three score and ten years allotted to man. From his entrance into the University of Dublin, to his leaving it, his course was a brilliant one ; and in 1823 he was awarded the Mathematical Gold Medal. During the five years ensuing, he applied himself to the study of the law ; and in 1828, being then in his six-and-twentieth year, was called to the bar. In the following year he joined the Connaught Bar, and from that hour to the hour of his leaving the Circuit, he displayed those qualities of mind and heart that won for him the esteem of his clients, the confidence of the solicitors, the admiration of the bar, and the respect of the Bench. Gifted with a vigorous and intelligent mind, he was unsurpassed in the rapid collection of facts, and in the application of the law to the facts when collected. His knowledge of human nature, and his power of observation, won for him the character of being second to none in the cross-examination of his antagonists’ witnesses. As a speaker, he was powerful, without a spark of eloquence ; nor did he attempt to conceal by any affectation on his part the absence of that gift which cannot be acquired, but which is given to man from above. In the Court of Chancery,

his arguments were listened to with the profoundest respect by Sir Edward Sugden, who, in 1841, called him as one of Her Majesty's counsel within the bar; and it was the opinion of that eminent chancellor and able man, that James Henry Monahan had no superior either at the English or at the Irish bar. Simplicity of statement, clearness of arrangement, detestation of trickery, glory in winning a case on the merits—these were his qualities. Then in the bar room he was one of the most genial of men; would play a rubber of whist, and enjoy himself until a late hour, his briefs, however, having been first carefully studied, noted, and commented on. Now, an English client in 1843 was plaintiff in an action to be tried at the Galway Summer Assizes; and being a member of the English Bar, he was, as a matter of course, the guest of the Connaught Bar Society, on each successive day; but this client was very far from being a happy man, when, on the night before his case was to be tried, he saw Mr. Monahan, q.c., close upon midnight, winning hand over hand at whist. "What," said the English client, in half-dazed amazement, "won't you read your brief to-night, Mr. Monahan?" "Oh! nonsense, man alive; we never read briefs here as ye do in England; we'll bottom it, as we used to say in Trinity long ago." In distraction, the client left the room, and in distraction came back in an hour to find that his leading counsel had retired for the night. With a heavy heart, he heard his junior counsel open the pleadings the next morning. But when Monahan stated the case, he showed, in the three hours he spoke, that he knew its very smallest details. He examined and cross-examined in his turn, and finally won for his client a verdict, bringing, as he always brought, his boundless learning in the law to bear upon his arguments.

On the overthrow of Sir Robert Peel's Government, in 1846, he was selected by Lord John Russell for the office of Solicitor-General, with Mr. Moore (who had previously held office under the Whigs) as Attorney-General; and the latter having been, in 1847, raised to a judgeship in the Queen's Bench, he was succeeded, as a matter of course, by Mr. Monahan, as Attorney-General for Ireland. In the month of February, 1847, he was returned as member of Parliament for the borough of Galway; but at the

General Election, in the same year, he lost the seat. The harvest of 1847, like that of 1846, had failed. These were disastrous times, and the disasters were deepened in 1848, when the French people, dissatisfied with the rule of Louis Philippe, "threw up the barricades, and invoked the God of battles." The throne of that faithless king fell, and he who had betrayed Charles X. was now himself an outcast. The flame of revolution was then lighted all over Europe. It was lighted in Ireland, but was soon extinguished here; and those who lighted it were transported to places beyond the seas, or else, escaping from the vengeance of the Government, sought, as John Blake Dillon, one of the most gifted and popular men on the Connaught Circuit, did, the hospitality of the United States of North America, which he enjoyed until the return of happier times. The name of Monahan is inseparably connected with the suppression of the Irish Rebellion of 1848. On the Connaught Circuit, however, no trial for high treason or treason-felony took place; and it would, therefore, be wandering from our path into other Circuits to speak of trials that took place on them.

The death, in 1850, of Chief Justice Doherty caused a vacancy in the Common Pleas, and the Attorney-General Monahan succeeded to the vacant seat. During five-and-twenty years he discharged the duties of Chief Justice, and few men even brought to the administration of the law a more vigorous or a more acute mind, and none has administered the office with greater zeal and impartiality. In 1876 he resigned his seat on the Bench. Immediately the Irish Bar assembled in the Law Library of the Four Courts; the chair was taken by Mr. Edward Pennefather, q.c.; an address was unanimously adopted, and it was presented by a deputation, consisting of the Attorney-General (the Right Hon. Edward Gibson), Sergeant Armstrong, E. Pennefather, Esq., q.c., and Charles Kelly, Esq., q.c., who waited on the Chief Justice at his private residence in Fitzwilliam Square. The address is as follows :—

"SIR,—We cannot allow the close relations which have for so many years subsisted between us to determine, without expressing to you the sentiments felt deeply by the Irish Bar on the occasion of your retirement. Presiding for a quarter of a century over the Court of Common Pleas, you

discharged your high functions to the entire satisfaction of the suitors, the legal profession, and the public. None are better qualified than ourselves to appreciate and to recognise the efficiency with which your high office has been administered ; and we believe that seldom have the duties of a judge been discharged with greater zeal, more penetrating discernment, deeper legal knowledge, or purer love of justice. These are the higher qualities which in your person have adorned the Bench ; but we cannot omit to say that you have been uniformly distinguished by an unfailing courtesy and consideration for us, which facilitated and made agreeable the discharge of our duties before you, and which will long endear the recollections of your judicial character to our profession. We will now only add that we sincerely wish you many years of happiness and repose in that retirement which awaits you."

The Ex-Chief Justice replied :—

"I am most grateful to the bar for the address which you have presented to me. The kind feeling which it evinces towards me touches me deeply. Indeed, during my whole judicial life, as well as now, at its close, I have received uniform kindness and consideration at the hands of the bar. For this I am profoundly grateful. I esteem the approval of the bar as the very highest honour which a judge can receive. Whatever success has attended my efforts to perform the duties of the office I have held, must be mainly attributed to the able assistance I have received from the profession. I thank you, gentlemen, and the rest of the bar, most warmly, and have now to express my sincere wish that although official relations between the bar and myself have ceased, the friendship and kind feelings which have so long subsisted between us may continue unaltered."

Judges as a rule, retiring from the Bench, are short-lived. In the absence of the excitement to which they had been long used, the hours heavily roll along—without business, without pleasure, they accuse the tedious progress of the sun, and in this comfortless state their repose hastens their decay. The learned Chief Justice, on his death, left a name great amongst the judges of the land.

Chief Justice Monahan was succeeded on the Bench of the Common Pleas by the Right Honourable Michael Morris, who had been, like his predecessor, a member of the Connaught bar. He was no stranger when he joined the Circuit in 1850; for beside the fact that he was a Galway man, several of his near kinsmen had already won a high position at the bar, and in their native town. We have already spoken of James Henry Blake, Esq., q.c.,

and Patrick Blake, Esq., Q.C., both of whom were cousins of Chief Justice Morris, and both of whom were members of our Circuit. Another member of his family, John Blake, deserves mention for the active part he took in the politics of Galway. He was maternal uncle to Chief Justice Morris, and first cousin of the Messrs. Blake, whom we have just named. He was born in 1798, entered Trinity College, Dublin, when scarcely fifteen years of age, and in his undergraduate course took honors in both classics and science. Graduating in 1818, he was called to the bar in 1824, then joined the Connaught Circuit, and from that time forward was the active and efficient colleague of Mr. Blake, afterwards Sir Valentine Blake, Bart., in helping to carry on the contest which was then being waged by the Independents of Galway against the Dalys of Dunsandle.

That contest sprang from causes that were then remote. Until the Great Rebellion, Galway was a wealthy and powerful city, as we have seen; and the families called the Tribes, of whom we have spoken, were pre-eminent there for rank, and for opulence, derived from trade. These families were noble in the true sense of the word nobility; just as the merchants of Venice were noble, though untitled. Their representatives ruled the town, as they had done for centuries, until it became necessary, after a long siege which they had sustained for the royal cause, to surrender on the 12th of April, 1652, to Sir Charles Coote. But the articles of surrender were such as the brave alone could claim. All persons within the town were to have quarter for lives, liberties, and persons; and six months' time was given to such of them as wished to do so, to depart with their goods and chattels to any other part of the kingdom, or beyond the seas. The clergy were to have the same time to depart, and, with few exceptions, an indemnity for past offences was given to all who were named in the second article of the treaty. The inhabitants were allowed to enjoy their real estates within the town or its liberties, saving, if these estates were sold, to pay a third part of the price to the State of England. Two-third parts of their real property were guaranteed to them; the corporation charters were to subsist; all prisoners from Galway were to be liberated without ransom; and all goods belonging to Galway, and

taken by land or sea, were to be restored. Ratification was to be procured by the president, Sir Charles Coote, within twenty days. On these conditions was Galway delivered up to the Parliamentary forces. But their violation had been resolved on from the first! A monthly contribution of four hundred pounds was levied on the town; fifty priests were shipped to neighbouring islands, until they could be sent to the West Indies, and only two pence a-day each was allowed for their support; the churches were converted into stables, the sacred vessels into drinking cups; the mayor and aldermen were imprisoned; and an order was made by the Council of State, in 1654, that the mayor and chief officers should thenceforth be English and Protestants, and should be, if they were not then such, removed. In the following year, by order of the Council of State, all Irish and other Popish inhabitants were ordered to be removed from the town, without distinction of age or sex; and most of them were driven from the town in the depths of a severe winter. The merchants thus driven away were replaced by soldiery, wealth by poverty, thrift by thriftlessness; and the town fell into decay. The Restoration brought hope to such of the old inhabitants as remained in the country, and many of them returned to the town; but, even then, they do not appear to have regained, at least until the reign of James II., their place in the government of Galway. The old names are no longer found in the "Grand Council," and those of the newly-come assume their place. In the reign, indeed, of James II. certain members of the families of the tribes appear again for a few years as mayors and sheriffs, and Members of Parliament for Galway; but the battle of Aughrim annihilated their public influence. After that battle Galway was invested by the troops of King William, under General Ginckel, and surrendered on favourable and highly honourable conditions, amongst which were, that such of the garrison as chose to remain in the town, or proceed to their respective homes, could do so, and enjoy the benefit of the capitulation, while the rest should march to Limerick with their arms, six pieces of cannon, drums beating, colours flying, match lighted, bullet in mouth, and as much ammunition and provisions as each officer and soldier could carry with him; that the garrison, corporation, and inhabitants should

enjoy their estates (real and personal) and their liberties, as they would have done under the Acts of Settlement and Explanation or otherwise; that the Roman Catholic clergy and laity of the town should have the private exercise of their religion; that the clergy should be protected in their persons and goods; and that the Roman Catholic lawyers of the town should have free liberty of practice, as they had in King Charles II.'s time.

Had such salutary provisions been loyally carried out in Galway and elsewhere in Ireland, how different would be her history! But even at the first, immediately after the surrender, the Roman Catholics were subjected to such considerable annoyance by the party in power, that many of their leading families quitted the town. Nevertheless, these annoyances were, during the reign of William III., the result of private prejudices of the ruling party, not the result of public law—*tacitæ discordiæ, et quæ intelligerentur potius quam viderentur*: for in that reign the rights of the Roman Catholics, under the terms of the capitulation, were allowed, and were even acknowledged by Parliament. But the accession of Anne was the beginning of the end! By the Act to Prevent the Growth of Popery, no Papist could, after the 24th March, 1703, take or purchase any house or tenement in Galway, or come to live in the town or its suburbs; while those who were then living there should either before that day have given security for their faithful bearing towards Her Majesty in such reasonable sum as to the authorities of the town should seem fit, or else should depart from the town. In 1708, on one occasion, during the apprehension of a Stuart invasion, the mayor wrote to the Privy Council that he had turned all the Popish inhabitants out of the town, and had committed their priests to gaol. They were, indeed, soon permitted to return; but they were subjected to a similar violence in 1715, and many isolated acts of persecution were, besides, from time to time, inflicted on both the clergy and laity of their creed. How, in such a state of things, could industry flourish amongst a class subject to such violence? It died away, or almost died away, amongst the Roman Catholics. The Protestant settlers had brought with them the traditions, not of industry, but of arms; as conquerors they despised what had been the occupation of the

conquered; and they felt that their own security depended on their being ever ready to keep what they had taken. No wonder then that the town was steeped in poverty! Meanwhile an Act of Parliament, known as the Galway Act, was passed in 1717, limiting the freedom of the town to such persons as had been professed Protestants for seven years, and had taken the oaths of supremacy and abjuration, and had subscribed the declaration against transubstantiation. Thus the freemen were both few and poor; and they were, therefore, naturally in the power of wealthy landlords. The Eyres, Shaws, Stauntons, and FitzPatrick's were, from the Revolution to the year 1764, for the most part in the ascendant; and the FitzPatrick's, whose power had, at the latter period, begun to wane, felt jealousy at the great influence then still possessed by the Eyre family. The FitzPatrick's, too, represented more of Liberalism and of sympathy with the Catholic party than was to be found amongst the Eyres. Looking about, therefore, for an ally, they found one in Mr. James Daly, of Dunsandle, who was wealthy and a Protestant, and who was desirous of supremacy in the town. Accordingly we find, in 1764, James Daly first on the list of the Common Council, while in the following year he was mayor, and in 1767 Member of Parliament for the town. Thenceforth the Dalys rapidly acquired great influence. They virtually nominated the mayors, sheriffs, and civic officers, and had the representation of the town in their hands; and from 1777 to 1820 every mayor, save one, bore the name of Daly. Their supremacy, however, though they represented the Liberalism of that day, was not allowed without protest. Mr. Patrick Blake, of Drum, about the year 1771, gave them much trouble; nevertheless Mr. Daly, of Dunsandle, in spite of all opposition, consolidated his power. Later on, Colonel Martin, of Ballinahinch, a member of our Circuit, entered the lists, but without success; and it was not till the year 1812 that a candidate who was not a nominee of Mr. Daly succeeded in being elected Member of Parliament for the town. Mr. Blake, of Menlough (afterwards Sir Valentine Blake), eldest son of Sir John Blake, was returned on that occasion, and again in the year 1818. Nevertheless the claims of Mr. Daly were by no means as yet subverted; for his power was really based on the non-resident

freemen of the corporation, whom he claimed the right to nominate; and the judges had but recently decided in favour of these non-resident freemen. His opponents, who were called the Independents, worked on steadily; but it was not till some years had passed that their efforts were crowned with success.

John Blake, of whom we were speaking when we entered on this long episode concerning the politics of Galway, was one whose ability and public spirit raised him high amongst the Independents of the town. He was the able and active coadjutor of Sir Valentine Blake; and during the Reform movement of 1832, he remained in London to assist in working up that portion of the enactments which abolished for ever the non-resident freemen of the town. This enactment necessarily broke the power of the Dalys, who could no longer confer on their own tenants the franchise of Galway. The Act was passed on the 7th August, 1832. Mr. Blake, proud of what he had done, returned at once to Galway to give an account of his stewardship; he arrived there on the 13th of August. He was received by the people with enthusiasm; bonfires blazed in his honour; the joy-bells rang merrily as he entered the town, and three days later the same bells tolled for his death! Consternation was on every countenance, grief in every heart. He had died in the night of cholera!

By his will he left to the Presentation Convent very considerable funds, by means of which was founded, later on, that branch of the order which is settled at Oranmore.

There was another Blake on the Circuit, John, eldest son of Sir Walter Blake, Bart., by Barbara, his wife, daughter of Myles Burke, of Ower, Esq. John Blake graduated in Trinity College Dublin, in 1782. In 1783 he was called to the bar, and in 1784, joined the Connaught Circuit. With abilities above the average, he might have expected to rise to high eminence at the profession, of which, however, he was independent, and he does not appear ever to have done more than to take his place as a circuiting barrister at the assizes, which relieved him from the burden of serving on juries. His father dying in 1802, he succeeded to the baronetcy and estates, and so continued in possession thereof until his death in 1834, when he was succeeded in both by

his eldest son, Sir Valentine J. Blake, M.P. Sir John left another son, John Brice Blake, several daughters, one of whom was married to Thomas Turner, Esq., of Hales Hall, Staffordshire; another to Lord Ventry; another to Mr. Mahony, of Dromore, County Kerry; and another, Arabella, to Sir Hugh O'Donel, Bart., of Newport, County Mayo, which Arabella was married secondly to John O'Hara, of Raheen, Esq., father of Robert O'Hara, Esq., B.L., for some time a member of the Connaught Bar Society, and now an eminent Parliamentary lawyer.

Before parting from our Circuit, we have to recall to our memory names that we have omitted in their chronological order. We have mentioned the name of John Kirwan, of the Dalgan Park family: but there were other Kirwans; there was James Kirwan, son of John Kirwan, Esq., of Castle Hacket, who represented a junior branch of the Kirwans of Cregg, in the County of Galway. Called to the bar in 1778, in the next year he joined the Connaught Circuit: though not a brilliant speaker, he spoke to the purpose, and his opinion carried weight with it in all cases where real property was involved. He was, therefore, better known in Chancery than in the Courts of Common Law. Mr. Kirwan shared in the family love for horses; for who is ignorant of the Castle Hacket horses, at the close of the last century, and what they achieved in the race? Their prowess is still remembered, and the name of their owner, the brother of Mr. James Kirwan, is perpetuated in the "Kirwan Stakes," at the Curragh meetings. Mr. James Kirwan was, in 1799, appointed assistant barrister for the County of Galway, which situation he resigned in 1820, when he was presented with a piece of plate, a silver cup, upon which is this inscription—"Presented to James Kirwan, Esq., by the magistrates of the County of Galway." The remainder of his days was passed at Castle Hacket. He died in 1829, as appears from the sepulchral inscription on the tomb of the Kirwans, in the Abbey of Ross: "Mr. James Kirwan, Barrister, departed this life the 4th May, 1829, aged 76 years." He was one of the most popular of men, not alone with his equals, but with the peasantry, who insisted on carrying his remains upon their shoulders for seven miles to their last resting-place in the abbey.

John Andrew Kirwan, J.P., D.L., was eldest son of Martin Kirwan, Tuam, second brother of Joseph Kirwan, of Hillsbrook, Esq., J.P. Joseph Kirwan left no son to inherit his property, but had several daughters, the eldest of whom married Captain Euseby Kirwan, by whom she had a son and daughter: the son, John, is married to Lady Victoria Hastings, and the daughter, Mary, is Lady O'Donel, wife of Sir George O'Donel, of Newport, in the County of Mayo, Bart. One of Mr. Joseph Kirwan's younger daughters, Elizabeth, is now the Right Honourable Elizabeth, Dowager Viscountess Netterville. John Andrew Kirwan, who took the estate under an entail, on attaining his twenty-first year, married Mary, only daughter of Major William Burke, by his wife Lady Matilda St. Lawrence, daughter of the Earl of Howth, and co-heiress of the last Earl of Louth. Called to the bar in 1845, having been educated in Trinity College, Dublin, Mr. Kirwan naturally chose the Connaught as his Circuit. One of the wittiest and most amusing men, perhaps the most amusing I ever met, he would probably have succeeded at the bar, were he dependent on his profession; but he was not. As a magistrate he was endeared to all sorts and conditions of men. Poor fellow, he died about ten years ago, leaving a daughter, Matilda, the wife of my relative, Joseph Burke, Esq., of The Abbey, Roscommon. Mr. Kirwan was known as "the poor man's magistrate," and his judgments were so full of fun that the prisoner often left the dock for the prison in screams of laughter. On one occasion a poor man was summoned for selling apples on a Sunday, and the majority of the Bench were for punishing him under the statute 3 and 4 William III. Mr. Kirwan being in the chair, was obliged, though dissenting, to pronounce the judgment of the Court, which was as follows:—

"My good man, you have been found guilty by the majority, and not by the minority, of the Bench, under a statute of William III., of the very desperate offence of selling apples on a Sunday. You are not aware, very likely, of who William III. was, because you are only a common appleman; but if you were an orangeman, you'd know it. You must understand that their worships don't like

people eating apples on a Sunday, although 'tis very likely that some of them, however pious, will have an apple pie for dinner next Sunday. And now, as you have been summoned under a certain Act, you'll be punished under that Act, and I sentence you under that Act to be put in the stocks for the next two hours; and"—turning to a brother magistrate—"I don't think there are any stocks in the town; and if there are not, you must be discharged." And discharged he was.

There was yet another name worthy of remembrance, that of Francis Burke, Esq., LL.D., third son of William Burke, Esq., of Ower, by his wife, Teresa Kirwan, sister to Joseph Kirwan, last above-mentioned. Born in 1783, he entered Trinity College, Dublin, in 1796, he being a few months over thirteen years of age. His undergraduate course was a brilliant one. Having been awarded the Hebrew premium, he obtained first honors year after year in classics and science, and lastly took the Gold Medal. On the then (for mathematicians) all-absorbing question, "The Binomial Theorem," he wrote a valuable treatise, which was a few years later written on by Sir Joseph Napier, Lord High Chancellor of Ireland. Mr Burke stood for Scholarship, and won it, stood in 1807 for Fellowship against Philip Crampton (afterwards Judge), and won thereat the Madden Premium (£300),¹ and would, had he gone in the next examination, most assuredly have taken a Fellowship. He preferred, however, to rest satisfied with his Madden Premium. In 1808 he was called to the bar, and in the same year was unanimously elected a member of the Connaught Circuit. Though "a sound opinion," a good Chancery lawyer, a safe pleader, and a renowned Equity draftsman, he was ungifted as an orator, and consequently was unequal to far inferior men on the Circuit. Francis Burke probably chose the bar as a profession because he had an uncle, Francis Burke, his father's brother, also a barrister; but the Irish bar was then closed against Catholics, and he was constrained to seek in places beyond the seas his fortune, which he did at the then colonial bar of Philadelphia. The mail packets—or rather stray vessels, carrying the mails—used in the middle

¹ "Dublin University Calendar" for 1834, p. 127.

of the last century to sail from Cork, accompanied on their outward voyage by a fleet for their protection. In the autumn, 1758, it was arranged that Francis Burke, senior, was soon to take his departure from Galway to Cork, there to take shipping for the West Indies. The bell-man had been duly sent round on Sundays and holidays, in Galway, and also in Tuam, and no doubt in Ballinrobe, to inform the public that on the 1st January, the muleteer would be in the saddle, at the Gallows-green, Galway, with loaded pistols, ready for the road. On the appointed day the travellers, each attended by a spare horse, met at the appointed place; and after three or four days they reached their destination, lighter luggage, clothing and the like, claret, &c., being carried in the saddle-bags, whilst the heavy chests were sent by common carriers on roads, which, to the degenerate men of modern days, would appear impassable. The following extract from a private letter from Francis Burke, descriptive of the mode of travel in those days, is not without interest.

“CORKE, *January 20th, 1759.*

“DEAR BROTHER,—We arrived, eighteen in number, here yesterday from Galway all in good spirits, so that, ye Lord be praised, we have no need to be grieved. Ye convoy is hourly expected, having now a favourable wind; so that we hope to have no great delay here. Captain Carroll (ye captain of our ship) is not yet arrived from England, but is expected. We lodge at one Captain Keane’s, near the Quay, where we are to pay seventeen shillings a week for our diet and lodgings, which is pretty extravagant, but could get it no cheaper; we are all hearty, as we lodge together. The carmen arrived here a Wednesday, and delivered us our chests this day. All our clothes are safe. Our horses behaved very well, but Jack Lynnote’s, who got ill about sixteen miles from this town, and I believe never will return to Galway. He was obliged to hire a horse, and pay six shillings and sixpence for him. My two horses are in tolerable order. I was advised to bring my boots and spurs, riding-coat, and whip.”

Nine years later he writes that he had taken out his degree, and that he had been admitted to the colonial bar. He also speaks

of liberty of conscience, at least amongst Christians, being there established, as appears by the following extract of a lengthened private epistle :—

“ SPRUCE STREET, PHILADELPHIA,

“ 3rd February, 1768.

“ I became an A.M. in the Academy here, and am now a counsellor. . . . This is a fine country, where a man can live as happy as at home—liberty of conscience for all that believe in Jesus. The finest girls in the world are here ; but I will never give my heart or my hand to an American lady. I shall wait until I return to my own land to Mary.”

I am not aware that he ever did return. On one of the pillars of the avenue gate of his ancestral home is inserted a slab, on which is cut his name, “ FR. BURKE, A.D. 1758,” being his last year in Ireland. Having made this digression from one Francis Burke to another, from our uncle to our grand-uncle, from the nineteenth to the eighteenth centuries, from the Connaught to the colonial bar, let us return to Francis Burke, who remained a member of the Connaught Bar Society until his death in 1845. Subsequently, in 1849, my brother, Mr. William J. Burke, A.B., T.C.D., now of Ower, J.P., became a member of the same learned body ; and after many years I was elected to the membership, and subsequently to the secretaryship thereof, in both cases having been proposed by Mr. James Robinson, A.M., T.C.D., Esq., Q.C., now the first Sergeant ; so that I was not a stranger to the Connaught bar when I joined. I had many relatives there also, and all of them my friends ; and now after long years, how, as I write, do I rejoice to think that, amongst those of us that remain, those friendships of early life are still undimmed ! Alas, that many of the best and brightest, when our circle closes in at evening, are no longer there ! Alas, for when can the friendships of youth be rivalled by the friendships of later years ? and when can the heart rejoice in the festive scene, as it used to rejoice “ in life’s morning march, when the bosom was young ” ?

A.D. 1866.—John Blake Dillon was one of the most remarkable of the brilliant young men who clustered together within the

walls of Trinity College in the years 1839 and 1840. He had been previously an ecclesiastical student at Maynooth; but finding himself unfitted for the priesthood, he left its cloisters for the bar, to which he brought the reputation which springs from having filled the office of Auditor of the College Historical Society. Called to the bar in the Trinity Term of 1842, he entered on the battle of life at a time when the agitation for the repeal of the Union was at its height. The young man's earliest years had been spent in the County of Mayo, where, at Ballyghadereen, in 1814, he was born of respectable parents. In appearance Dillon was a man of lofty and elegant bearing—

“In whom the gods had joined
The mildest manners with the bravest mind.”¹

As a political writer he was well known; and in the year in which he was called to the bar, his name appears as one of the writers in the prospectus of “*The Nation Newspaper*,” then about to be launched into life.

On the appointed day the “*Nation*” “came out,” and we are informed by Sir Charles Gavan Duffy that the article “*Aristocratic Institutions*,” was from the pen of Dillon.

Though political feelings were embittered in the memorable year 1843, and though the majority of the Connaught Bar Society were Conservative, yet they welcomed to their ranks in that year young Dillon, who was proposed by Walter Bourke, Esq., Q.C., and seconded by Matthew Atkinson, Esq. In Castlebar he got his first brief, and acquitted himself thoroughly well, and to the satisfaction of his many friends; yet writing of that performance, he says: “If I acquired any fame at Castlebar, I owe it to the unblushing mendacity of my good friends the reporters. My speech was very weak, and I would be very much dissatisfied with myself if I had not the justification of its being a first speech to a jury, and made without even a moment to think of what I was to say.”

Whilst opposed to the agrarian laws of Ireland as they then were, he was also bitterly opposed to the assassinations which degraded, alas, this Christian land! “What is the course,” he

¹ Pope's “*Iliad*,” xxiv., line 902.

wrote, "which the people of Ireland ought to pursue? They ought to join together, and call with one voice for a complete remodelling of the laws affecting landed property. Instead of committing unmeaning murders, which every good man must condemn, however he may pity the unhappy wretches who are driven to those dreadful deeds—instead of breaking out into partial insurrections, which only expose them to the vengeance of their oppressors—let them unite and work with a common purpose, and their combined strength cannot be resisted." This salutary advice does not go the length of advising the people not to take advantage of friendly foreign aid when they could find it; and when therefore the French and Americans offered to assist O'Connell in forcing from England the repeal of the Union, and when the Liberator exclaimed that he would rather abandon repeal than owe it to infidel France, while, as for America, his countrymen "would help England to pluck down the American Eagle in its highest pride of flight," Dillon became indignant, and wrote as follows of the insult thus offered to France and America:—"Everybody is indignant with O'Connell for meddling in the business. His talk about bringing down the pride of the American Eagle is base and false. Such talk must be supremely disgusting to the Americans." The truth is that Dillon was ready at any moment to secede from the Repeal Association; and Thomas M'Nevin, also a distinguished member of the Connaught Bar Society, and author of "The Volunteers of 1782," and "The Confiscations of Ulster in the reign of James I.," says that Dillon wrote him a letter stating that he was sick of the Conciliation Hall, from which, indeed, he soon after seceded, as also did M'Nevin.

The hardships of an inclement "Circuit" in 1846 told upon the robust frame of John Blake Dillon, and a cold caught in Castlebar fastened upon his chest. He was ordered, in consequence, to Madeira for the winter, whither, with many misgivings, he proceeded.

The subsequent career of our learned friend is well known. Though opposed to taking the field, he yet felt that he was bound to William Smith O'Brien in 1848. After the failure of the insurrection of that year, he was for a time concealed in the neighbour-

hood of Tuam, and was actually under an old arch of the weir bridge when a party of police crossed it in search of him. From Tuam he escaped to Galway, where, disguised as a Catholic priest, he sailed for New York. Breviary in hand, the *quondam* theological student acted his part so well that a pair of lovers, seeing a priest on board, applied to him to perform the marriage ceremony. He made many excuses, but at last hit upon the right one, that he had no faculties from a bishop to permit him, when on board, to perform the ceremony of marriage. On arriving in New York, he was admitted to the bar; in 1854 he returned to Ireland, and in 1856 was re-admitted unanimously to his former Circuit. For a time he took no part in politics, but was at length induced by some friends to enter the Corporation of Dublin, when he turned his attention to the financial relations between England and Ireland. In an able and carefully compiled report to the Corporation, he demonstrates that the Irish taxes expended out of Ireland in 1861 amounted to nearly four millions; and when, in 1865, he was elected Member of Parliament for Tipperary, he brought this subject under the notice of the House of Commons. Of the Fenian organization he disapproved; nevertheless he was in his later, as in his earlier years, the unaltered and unalterable foe of English rule. "What," said he, "have our great men been struggling for under various forms for the last two hundred years, but that the rule of the stranger should cease upon those shores—that his bigotry should no longer insult our convictions, and that his greed should no longer devour our substance? In front of all our institutions, civil, military, and ecclesiastical, that shameful inscription may still be read, 'This land belongs to England.' To erase this foul legend has been the object of the efforts of every genuine patriot from Swift to O'Connell." I knew Dillon well, and often and often was I entertained on Circuit by the anecdotes he used to tell of his adventures when concealed, in the neighbourhood of Tuam, after the abortive rising in 1848. He died of the cholera in 1866, and was interred at Glasnevin. His was a mind thoroughly free from illiberality of any kind, and though not successful as a speaker, yet his calm and earnest manner, and the fulness of his knowledge which he brought to bear on the subject, always secured him a hearing when he felt called upon to address the House.

A.D. 1869.—Henry Concannon, Esq., LL.D., Q.C., was popular amongst all classes on the Circuit. He was eldest son of Edmund Concannon, Esq., of Waterloo, a County of Galway gentleman. In his earlier years he was excessively fond of attending the Assizes balls and teas, then colloquially called tea-fights, whence Mr. Keogh (afterwards Judge), in the course of one of his oft amusing after-dinner speeches, alluded to him as “Con of the hundred tea-fights,” a play on the name of one of the heroes of Irish history, “Con of the hundred battles.” Mr. Concannon was well known as a criminal lawyer, and as an able defender of prisoners. He had amongst his friends of the Circuit men connected with the press, and was, for this cause, besides his own merits, never omitted from the papers as having been counsel in a case, or as having made an “able and eloquent address” to the jury. On one occasion, when Mr. Justice Keogh was trying a case in Galway in which, Mr. Concannon had spoken exceedingly well, the latter, as he resumed his seat, turned merrily to the legal reporter, who was at the other end of the bar seats, and called out aloud, so that the judge could hear him—“X——, remember ‘able and eloquent’ ” (X—— we use as the sign of the unknown quantity, whose name as reporter we advisedly, lest it should give him offence, refrain from giving.) The judge, who was infinitely amused, was amused still more when he heard Concannon add in louder tones, “Mind, ‘Critically speaking, it was one of the ablest defences that it was ever our privilege to hear in a Criminal Court.’ ” Twenty-four hours went over, and down came the morning papers; and Mr. Justice Keogh, wiping away the tears of laughter that were streaming from his eyes, chuckled with delight at what he had heard and what he was reading, as follows:—“The hearing of this case, the particulars of which we have already more than once laid before our readers, was resumed at the sitting of the Court. Mr. Concannon in an able and eloquent speech addressed the jury. Critically speaking, it was one of the ablest defences that it was ever our privilege to hear in a Criminal Court. The prisoner was acquitted accordingly.” The judge dined with the bar that evening. The Secretary gave out before dinner the old and long disused grace of the Circuit, “*Benedictus benedicat,*” and after dinner,

"*Benedictus benedicatur.*?" And then the witty judge, who had been all this time burning to speak on the ludicrous stage whispers, and the consequent newspaper reports, complimented Mr. Concannon and Mr. X—— on the speech and on the report. "By the way, X——" said the judge, "I'm told there is a tariff for the reporters' praises—a tariff, a sliding scale of payment, proportionate to the amount of the praise." The reporter, one of the best of fellows, said that "whoever told the judge that information had told him the truth!" "Let us have the scale," said Mr. Justice Keogh. So Mr. X——, looking very thoughtful, said that the scale was simple; that when the public were informed that "such a gentleman appeared as counsel for the prisoner," that announcement was attended with no charge; but when "counsel addressed the jury in an able and eloquent speech," that was one guinea; "able and eloquent, followed by loud applause, which was instantly suppressed by the Court," two guineas; and "able and eloquent, followed by loud applause, in which his lordship joined," three guineas.

Alas! with what pleasure I look back to those happy evenings, to "those Attic nights and refectations of the gods," which can never more return! Mr. Concannon was appointed Queen's Counsel in 1868, and never did the gaining of a step in the profession give more general satisfaction, for never was there a man more generally beloved than he was. He was kind, courteous, and hospitable, and had he lived, would assuredly have obtained a prize in the legal lottery. But his health failed him, and he died in May, 1869, regretted by all who knew him.

In the "Irish Times" of the morning after his funeral, the following paragraph appeared:—

"The funeral of this respected gentleman, which took place yesterday, was an exceedingly large one. Seldom has passed from the ranks of the bar one more deservedly regretted than Henry Concannon, who, though energetic in his clients' cause, was never known to wound the feelings of those he was opposed to. The eldest son of Edmund Concannon, of Waterloo, in the County Galway, he graduated in Trinity College, Dublin, in 1838, was called to the bar in 1839, appointed Queen's Counsel on the 13th of May, 1868, and died on the 16th of May, 1869. By his decease the Crown Prosecutors for the County of Sligo, and the supernumerary Crown Prosecutors for the County Galway have become vacant, as also the office of

Counsel to the General Post Office. Mr. Concannon was married in 1854 to Countess Maria de Lusi, granddaughter of Lady Gifford, who, on her second marriage, in 1805 became Marchioness of Lansdowne. Amongst those who attended the funeral were the Lord Chancellor, and several of the Judges, and all the members of the Connaught bar, and many of the aristocracy of the County of Galway, his native county."

On the 14th of June following, at the Annual Meeting of the Connaught Bar, the following resolution was unanimously adopted :

"That our Secretary do convey to Mrs. Concannon the sincere condolence and sympathy of the Connaught Bar on the irreparable loss she has sustained by the lamented death of her husband, the late Henry Concannon, Q.C., LL.D., who was so long an esteemed and distinguished member of this Bar."

A.D. 1878.—Mr. Gerald FitzGibbon in this year resigned his place in the Court of Chancery. He was born on the 1st January, 1793, and was called to the bar in 1830. He chose the Connaught Circuit; but some depreciatory remarks made by him caused his rejection in 1831. Courageous and indomitable, Gerald FitzGibbon was not the man to be disheartened or turned aside from his purpose. He went the Circuit, despite of every opposition; and the very severity that prevented others from holding a brief along with him only served to render more conspicuous his talents, learning, and indefatigable energy. Rapidly he rose into notoriety, and an extensive practice soon rewarded merits such as his. Indeed, so pronounced was his success, that in 1836, on the motion of Mr. Keatinge, Q.C., seconded by James H. Blake, Q.C., he was elected a member of the Connaught Circuit. In 1843 he was retained for the defence in the memorable State Trials, and among that mighty bar Mr. FitzGibbon held a distinguished place. We shall not here repeat the story we have told elsewhere of the challenge that was sent on that occasion to Mr. FitzGibbon by the Attorney-General of the day. (*Vide supra*, p. 230). His plodding, painstaking industry, his penetrating acumen, his thorough knowledge of law, and skill in technicalities, were eagerly sought in every trial of any importance. An able and persuasive speaker, it was by closely-reasoned arguments rather than by lofty oratory he sought success. Clear-sighted in his mastery of the points at issue, their minutest details were ever threaded by his patient,

and sagacious scan. The vigour and earnestness of FitzGibbon were characteristics specially alluded to in the celebrated "Voice of the Bar" (1850); and to hear and to see that learned counsel and Walter Bourke, q.c., arrayed one against the other, each with the "war-paint" on, was an exhibition worthy of remembrance: for neither yielded to the other in zeal for his client, and both were possessed of an amount of sarcastic ammunition that they were not slow in utilizing. So in a case where the Sergeant was for the defendant, at the Galway Assizes, 1860, he spoke from ten o'clock until three, for five consecutive hours; and at three Walter thus commenced:—"Gentlemen of the Jury, there was a time, when I was a little boy, I used to go into Castlebar every day almost, to see an old woman who used to sit at her own door spinning, spinning, spinning, from morning until night; for, gentlemen, she had made a vow on a Christmas night to spin for a neighbouring convent for a year and a day, and from sunrise till sunset, so many suits of altar cloths, albs, and surplices, as she could spin in that time; but she forgot on Christmas night that the days would soon lengthen, and whilst on St. Stephen's day she spun from half-past eight in the forenoon to half-past three in the afternoon, on St. John's day in June she commenced her spinning at half-past three o'clock in the morning, and there she was with her spinning-wheel [here Mr. Bourke imitated the action of the spinner]—boo-woo, boo-woo, boo-woo, spinning, spinning, spinning; and at half-past eight o'clock in the evening the hum of the wheel ceased, she packed up her duds, and exclaimed, 'Thanks be to God, the longest day must have an end.' And now, gentlemen, there's not one of you that won't sympathise with that old lady and with me, and in your sympathies exclaim, 'Thanks be to God, the longest speech must have an end.'" Mr. FitzGibbon was elected a Bencher of King's Inns in 1858, was appointed a Sergeant-at-law in 1859, and in 1860 was raised to the dignity of Receiver Master in Chancery. Not legal knowledge alone, but practical sagacity, was here required, and never were the functions of Receiver Master performed with more indefatigable attention and marked judicial ability than by Master FitzGibbon. At last, in April, 1878, he resigned office, and passed away, at the patriarchal age of ninety years, on

the 27th September, 1882. His name survives, however, to us, in the judicial eminence and brilliant talents of his son, the Lord Justice of Appeal.

A.D. 1882.—Walter M. Bourke, Esq., joined in the year 1862 our Circuit—one whose melancholy end, in after years, created sympathy and sensation throughout the civilised world. He was the nephew of Walter Bourke, Esq., q.c., of the Carrokeel family, in the County of Mayo. A pupil of the Jesuits at Clongowes-wood College, he was a graduate of Trinity College, Dublin, and won during his University career several prizes in English literature, and then turned his attention to the study of the law. He was acquainted with some of the languages of the East, especially the Sanscrit, and wrote a paper on the Vedas, and throws a deal of light on the subject of the Ramayana, the great epic poem which deals with the descent of Vishnu, for the purpose of averting the threatened destruction of the world by the prince of the demons, Ravana. Mr. Bourke then stood an examination in Oriental literature, and took the first prize, and won an appointment of some seven or eight hundred a-year in India. This, however, he was unable to retain, being a few months over the limited age. He then joined the Connaught Circuit, where he would probably have done well; but immediate fortune was the object of his ambition—wealth in youth, when he could enjoy it; not wealth in old age, when wealth cannot be enjoyed. He, therefore, left the Circuit for the golden East, and set sail for Calcutta, taking little with him but the testimonials of the Provost of Trinity College, of the Judges, and of the Catholic Prelates. He was soon admitted to the Calcutta bar, and joined the reporting staff of the local Law Reports. He quickly found that he had to toil there too; but a lucky accident, of which his abilities enabled him to avail himself, pushed him to the front. The Catholic Archbishop entrusted him with several cases, which he conducted with zeal and ability, and with a knowledge of the language of the country, which is naturally an invaluable adjunct to an Indian barrister. The natives, seeing the European lawyer able to hold converse directly with themselves, soon employed him; and before he had been two years in the East, he was in receipt of an income of three thousand a-year. Later on, while the Catholics of every country in the world were pouring

in their congratulations on the Jubilee of Pius IX., Walter M. Bourke was selected by a number of his India friends to carry to the Holy Father their felicitations on that the fiftieth anniversary of his ordination. He came to Rome, was received at the Palace of the Vatican, and presented the address and rich offerings of his Eastern friends. He returned to India, and persevered in his professional labours; and having accumulated a considerable sum of money, invested it in the purchase of Rahassane Park, in the County of Galway. A Cain and Abel state of society—a bloody and barbarous civil warfare—such as had existence within the limits of no other country on the surface of the globe—followed during the following years. Among savage tribes, when the hatchet of war is displayed, the cruelties and tortures exercised upon enemies are proverbial; yet amongst themselves the fraternal pipe of peace is never extinguished. Here in Ireland, society was shaken to its foundations, and Ribbonism and landlord-shooting rose in the ascendant. It was then vain for the law to pretend to punish, to intimidate, or even to try the perpetrators of noonday murders; for even in the hallowed courts of justice the demon of Ribbonism, like a ghastly spectre, significantly stood, threatening the witness who would dare to give evidence against the murderer, and the jurors who would dare to convict in accordance with the evidence. Poor Walter Bourke returned from the land of the Pagans to the land of the Christians, and since his return he had taken up his residence at Rahassane Park; and from Rahassane—it was on the morning of Thursday, the 8th of June, 1882—he proceeded to the neighbouring town of Gort, accompanied by a soldier, for it was known that his life was in danger, and the soldier had been told off for his guard. But the assassins were on the walk, and on his return, and on the high road, and in the light of the clear day, they shot him, with his guard, dead on the spot, and from behind a wall that they had loopholed for the purpose, and where men were passing and repassing. Thus, was he, by a Christian's hand, of life deprived—

“ Cut off even in the blossoms of his sin,
Unhousel'd, disappointed, unanel'd;
No reckoning made, but sent to his account
With all his imperfections on his head.
Oh, horrible! oh, horrible! most horrible!”

Absenteeism, the bane of this island, found little of favour at the hands of the Connaught judges. Mr. Justice Keogh, thus, at the Summer Assizes of 1869,¹ addressed the Grand Jury of the County of Galway :—

“The Law Life Assurance Company, gentlemen, is an absentee corporate body, who carry on their business in London, and who never come to this country. They are the owners of vast estates in this county and in the County of Mayo. Yet they never disturb their repose by contributing to the comforts or looking to the interests of their tenants. The term ‘absentee’ is an odious term—a person who derives his income in one country, but resides in another, where he expends that income. The common voice of mankind says that this is an evil and an injustice. It points to lands imperfectly cultivated, to labourers inadequately employed, to ruined cottages, to uneducated children ; and it proclaims that these things would not be if the proprietor resided upon his estate.”

It is not unworthy of remark, that whilst absenteeism is, and always was, the evil described by the learned judge, the English Parliament over and over again sought to apply a remedy to correct that evil ; thus in the reign of Henry II. (though the Act was never printed),² an Act was passed, whereby it was enacted that absentees should dwell on their estates in Ireland, otherwise the Government should dispose of half their living.³ The great Absentee Act was that passed by the English Parliament in the first year of the reign of Richard II., whereby a tax of two-thirds of their income was imposed upon absentees. The Absentee Act of 28 Henry VIII. went farther still ; for after reciting the evils of an absentee proprie-

¹ “Irish Times,” July 24, 1869.

² “Many of our Statutes in Ireland were never printed. (*Vide* the list of unprinted Statutes in the Carew MSS.) Thus the famous Statute of Kilkenney, 40 Edward III., of which there is a copy in French in the Lambeth Library, is unprinted, and is not even on the Roll of the Statutes, though amended by other Acts ; for it was lent out by Lord Aungier, Master of the Rolls, in 1630, and lost.

³ *Vide* Coke’s Institutes, word “Ireland,” chap. lxxvi., p. 376.

tary, it confiscated in 1537 the Irish estates of Thomas Howard, third Duke of Norfolk, and several others therein mentioned. While Mr. Justice Keogh was thus declaiming in the Crown Court, Mr. Justice (now Lord) Fitzgerald was trying, in the Record Court, an action for libel, the particulars of which it is needless here to mention; suffice it to say that the duties of landlords to their tenants cropped up there also. Mr. Robinson, q.c. (now the first Sergeant) was the leading counsel on the tenant's side for the plaintiff; and the late Mr. Carleton, q.c., was leading counsel for the defendant. The one side insisted that the tenants had been processed on the 2nd of November for rents accruing due on the day next before. This was denied by the other; but the jury found for the plaintiff, and the foreman, Mr. Xaverius Butler, addressing his lordship, said that "the jury could not separate without expressing their abhorrence of the system of perpetually harassing the tenants with processes that were proved to exist on the ——— estate. That was the feeling of the jury, and they were all landlords themselves."

The learned judge said he fully concurred in the observation.

There can be no manner of doubt that the ancient gentry of the province of Connaught would be incapable of such cruel conduct to their tenantry; and so it appears from a report presented to both Houses of Parliament, March, 1870, a great portion of which I myself had the honour of drafting for the late Dr. Roughan, with whom I was associated in making the inquiries which are thus noticed in the "Irish Times" of the 1st of January, 1870:—

"FROM OUR OWN CORRESPONDENT, SLIGO, FRIDAY, 30TH DECEMBER, 1869.—George Roughan, Esq., M.D., accompanied by Oliver J. Burke, Esq., Barrister-at-Law, who are at present engaged by orders of the Government in making inquiries throughout the several Unions of the Counties of Mayo and Sligo, and of the Unions of Clifden and Oughterard, in the County of Galway, and of Manorhamilton, in the County of Leitrim, arrived at the Imperial Hotel on Monday, and left this day for Ballina. The object of the present inquiry is to obtain the most unprejudiced and reliable information concerning the present relations between landlords and tenants throughout these districts."

That inquiry was commanded by His Excellency Earl Spencer, who became the Lord Lieutenant of Ireland on the 9th of

December, 1868. Now, in reference to this declaration of the foreman of the jury as to their abhorrence of such cruelty to tenants, I find myself, on a kindred subject, in the report mentioned, writing thus, the subject under consideration being, "LOSS OF VALUE OF IMPROVEMENTS BY TENANTS—INCREASE OF RENT IN THE COUNTY OF MAYO:"—"The question whether the tenant-farmer has lost the value of his improvements by reason of a disproportionate increase of rent is one the solution of which it is difficult to arrive at. That an increase of rent has, within those latter years, taken place, is certain. As a rule, I have found that that class of landlords who may be denominated as the ancient proprietors, do not, for many years after improvements, raise their rents. On some estates a valuation does not take place for twenty years, on others for ten, and others for seven; and I have met with cases where the rent was not raised from time immemorial. The new landlords, as a rule, cause a valuation to be made on getting into possession; and it concerns them but little to inquire wherefore or how the estate has been improved, provided they receive so much per cent. on their capital. Since the establishment of the Incumbered Estates Court, tenants innumerable have, by a great disproportionate increase of rent, lost the value of their improvements." "On an estate in the County of Leitrim, and on another at Maam, in the County of Galway, it is usual for the notice to quit to be on the back of the receipt for rent!"

Another judge, Baron FitzGerald, who had been on the Circuit from 1835 to 1859, and who descended the Bench in the year 1884, after four-and-twenty years' public service, retired into private life. When his retirement was officially announced, a meeting of the bar was held in the Library of the Four Courts, and a parting address was presented to him on their part by the then First Sergeant, Mr. Sergeant Sherlock, q.c., as follows:—

"TO THE HON. FRANCIS A. FITZGERALD, LL.D.

"SIR,—On our reassembling at the close of the Summer Vacation, we, the Bar of Ireland, miss from the Bench, in your person, a judge who has so long presided over us with a dignity, impartiality, and gentle courtesy, our sense of which it will be difficult to embody in words. To dwell on the judicial qualities universally acknowledged, which have so eminently dis-

tinguished you, would, we feel, be distasteful to one whose unobtrusiveness is well known, and whose advancement has always been unsought by himself, and due only to the public appreciation of his talents, learning, and integrity ; but whilst so refraining, we cannot suffer you to depart from us without expressing our deep sense of the loss which the country will sustain by your retirement in the fullness of your powers from the place which you have for over twenty years filled—to borrow words which can never be more worthily applied—‘without fear and without reproach.’ On that Bench we can never hope for a purer or more perfect character. Signed on behalf of the bar of Ireland.

“RICHARD J. LANE (Father.)”

The Hon. Baron FitzGerald, who was received with long-sustained applause, and who seemed deeply affected, replied as follows :—

“Parting from active life, and from the friends with whom I have been so long associated, is to me a very serious and solemn matter. Even with your more than indulgent address before me, my thoughts will turn to the many failures and failings of a course of great responsibilities, unusually prolonged. But be that as it may, it is natural, and I hope it is right, to take comfort and encouragement from the assurance that to the end of this long course I have retained the good opinion and good-will of the profession to which it is, and ever has been, my pride to have belonged. You have given me this assurance, and I gratefully and most gratefully thank you. I can truly say, that of the honour of our common profession I have been always sensitive. You who are still bearing the burden and heat of the day, have maintained its honour, as well as its reputation, in all other respects ; and I hope and believe that they ever will be maintained by those who follow you. Once more I thank you.”

We may be allowed to add that the praise of the bar was well deserved by the judge.

The brethren of the Connaught bar had the great pleasure of seeing, in the Summer Circuit of 1878, that both of the Judges of Assize were from the Connaught Bar Society—Chief Justice Morris and Sergeant Robinson, both Benchers of the King’s Inns. This was not the first time that the learned Sergeant filled the office of Circuiting Judge ; for in the next preceding year he was associated with Mr. Justice Keogh on the Munster Circuit ; since which time he has gone once on the North-east and once on the Leinster Circuits as Judge of Assize. The North-east must have had for him sad associations, as it was that

to which his near relative, Chief Justice Whiteside, had, for the greater part of his professional life, belonged. The North-west would have been hallowed by pleasanter memories. He had been for many years Chairman of the Counties of Tyrone and Cavan on that Circuit, and had received, when he had retired from each, addresses of the most gratifying character. The bishops of both churches in Kilmore were signatories to the Address from Cavan. Sergeant Robinson had previously been Chairman of the County of Roscommon, and the conclusion of his connexion with that county was marked by a like expression of regret.¹ But we must not stray from the path we have

¹ Address from the Magistrates of Roscommon, signed by Justices of the Peace, on the occasion of the learned gentleman being promoted to the Chairmanship of the County of Tyrone :

“ ROSCOMMON, *August*, 1863.

“DEAR SIR,—We, the undersigned Magistrates of the County of Roscommon, cannot allow you to take your departure from amongst us on your removal to another county, without expressing the sentiments of esteem and regard which we entertain towards yourself personally, and our admiration of that temper and patience, and of those high professional qualifications which you invariably displayed in the investigation of every question brought before you in your judicial capacity as Chairman of the Court of Quarter Sessions of the county.

“ And whilst we feel regret at the loss of that sound advice and assistance which we always found you ready and able to afford as our Chairman, that regret is tempered by the reflection that your abilities as a lawyer, and your courtesy as a gentleman, have met with their deserved reward in your promotion to a first-class county. We now take leave of you, wishing all the success in your profession which attends on high professional merit and unswerving integrity.

“ Faithfully yours.”

[Here follow the signatures, seventy in number.]

In the same spirit is the Address of the magistrates and other gentry of the County Tyrone :—

¶ “DEAR SIR,—We cannot allow the tie to be severed which for the last six years has connected you with our county, without expressing to you the sincere regret which we feel at your departure from amongst us.

“ We are not unaware of the fact that the onerous duties connected with the Chairmanship of the Quarter Sessions in the large and populous County

¶ “Dublin Evening Post,” 28th July, 1869.

marked out for ourselves to follow, namely, not to speak of living men, for to praise the living, even when praise is due, might look like adulation, and to dispraise the living, even if such were needful, would give pain. The latter motive, indeed, cannot operate; for we know not whom amongst the living men of the Connaught bar to censure. Public spirit, the spirit of their profession, the spirit of honour, were never more alive in the hearts of their predecessors than they are to-day in those of the living members of the Connaught Bar Society. Need it be said, then, how willingly we would record the achievements of such men, did we not dread that hereafter some one might say that these praises

of Tyrone, were such as to entrench too much upon your private time, and to interfere with your other engagements, and that you have thought it desirable to retire to the comparative repose of a less laborious, if less important, State appointment.

“We cannot, however, refrain from a regret that promotion to some higher branch of the public service had not been the cause which separated you from us—a regret which arises not only from the friendly feeling which we entertain towards yourself, but from our unhesitating conviction, that any position in your profession which it may be your lot to fill will be benefited and adorned by one who has proved himself so excellent a man of business, so acute a lawyer, so dignified a judge.

“These are no idle words; we speak them with the feeling that they are no more than the truth. Wishing you all possible prosperity and happiness in every relation of life,

“We are, dear sir,

“Yours very faithfully and sincerely.”

[Here follow the signatures of more than eighty Justices of the Peace.]

The following is an extract from the Address from the noblemen, gentry, and magistrates of the County Cavan, presented to the learned Sergeant on the occasion of his retiring from the Chairmanship of that county. After expressing their regret at parting, it thus proceeds—“Your decisions have invariably been guided by equity and justice, emanating from your sound knowledge of the law, and the determination not to swerve from that impartial course which has gained for your judgments the satisfaction of all parties. When we were associated with you on the Bench, we had the advantage of your experience, judgment, and courtesy. In conclusion, we hope soon to see your higher advancement on that Bench to which your learning has already rendered you an ornament.” The address was signed by seventy-six signatories.¶

¶ “Daily Express,” 22nd April, 1878.

were due rather to our partiality than to their deserts? It is, therefore, not fitting for us, and we regret it, to come nearer to the present time; but we have this consolation, that the future historian of the bar of Ireland must give much of praise to the Connaught bar of the second half of the nineteenth century.

APPENDIX.

CROMWELL'S ACT FOR "THE SETTLING OF IRELAND."

12th August, 1652.

Whereas the Parliament of England, after expense of much blood and treasure, for the suppression of the horrid rebellion in Ireland, have, by the good hand of God upon their undertakings, brought that affair to such an issue as that a total reducement and settlement of that nation may, with God's blessing, be effected. To the end, therefore, that the people of that nation may know that it is not the intention of Parliament to extirpate that whole nation, but that mercy and pardon, both as to life and estate, may be extended to all husbandmen, plowmen, labourers, artificers, and others of the inferior sort, in manner as is hereafter declared, they submitting themselves to the Parliament of the Commonwealth of England, and living peaceably and obediently under their government; and that others also of a higher rank and quality may know the Parliament's intention concerning them, according to the respective demerits and considerations under which they fall. Be it enacted and declared by the present Parliament, and by the authority of the same, That all and every person and persons of the Irish nation, comprehended in any of the following QUALIFICATIONS, shall be liable to the penalties and forfeitures herein mentioned and contained, or be made capable of the mercy and pardon therein extended respectively, as is hereafter expressed and declared, that is to say:

1.—That all and every person and persons, who at any time before the 10th day of November, 1642, being the time of the sitting of the first General Assembly at Kilkenny, in Ireland, have contrived, advised, counselled, or promoted the rebellion, murders, and massacres done or committed in Ireland, which began in 1641, or have at any time before the said 10th day of November, 1642, by bearing arms, or contributing men, arms, horses, plate, money, victuals, or other furniture or habiliments of war (other than which they shall make to appear to have been taken from them by mere force and violence), aided, excited, permitted, prosecuted, or abetted the

said rebellion, murders, and massacres, be exempted from pardon of life and estate.

2.—That all and every person or persons who at any time before the 1st day of May, 1643, did sit or vote in the said first General Assembly, or in the first pretended Council, commonly called "The Supreme Council of the Confederate Catholics in Ireland," or were employed as secretary or chief clerk, to be exempted from pardon of life and estate.

3.—That all and every Jesuit priest, and other persons, who have received orders from the Pope or See of Rome, or any authority from the same, that have any ways contrived, advised, counselled, promoted, continued, or abated, or at any time hereafter shall in any wise contrive, advise, counsel, or promote rebellion, or any of the murders or massacres, robberies or felonies, committed against the Protestant English, or others, there be exempted from pardon for life and estate.

4.—That James Butler, Earl of Ormond; James Talbot, Earl of Castlehaven; Ulick Burke, Earl of Clanrickarde; Christopher Plunket, Earl of Fingal; James Dillon, Earl of Roscommon; Richard Nugent, Earl of Westmeath; Morogh O'Brien, Baron of Inchiquin; Donogh M'Carthy, Viscount Muskerry; Richard Butler, Viscount Mountgarrett; Theobald Taaffe, Viscount Taaffe, of Corren; Rock, Viscount Fermoy; Montgomery, Viscount Montgomery, of Ards; Magennis, Viscount of Iveagh; Fleming, Baron of Slane; Dempsey, Viscount Glanmaleene; Bermingham, Baron of Athenry; Oliver Plunket, Baron of Louth; Robert Barnewall, Baron of Trimleston; Myles Bourke, Viscount Mayo; Connor Magwire, Baron of Enniskillen; Nicholas Preston, Viscount Gormanstown; Nicholas Netterville, Viscount Netterville, of Louth; John Bramhall, late Bishop of Derry (with eighty-one baronets, knights, and gentlemen, by name) be exempted from pardon of life and estate.

5.—That all and any persons and person (both principal and accessories), who since the 1st of October, 1641, did kill, slay, or otherwise destroy any person or persons in Ireland, who, at the time of their being so killed, slain, or destroyed, were not publicly in arms as officers or private soldiers for or on behalf of the English against the Irish, and all and every person and persons (both principals and accessories) who since the said 1st day of October, 1641, have killed, slain, or otherwise destroyed any officers or private soldiers for or on behalf of the English against the Irish (the said persons so killing, slaying, or otherwise destroying not being officers or private soldiers under the command of the Irish against the English) be excepted from pardon for life and estate.

6.—That all and every person or persons in Ireland that are in arms, or otherwise in hostility against the Parliament of the Commonwealth of England, and shall not, within 28 days after the publication hereof by the

Deputy-General of Ireland, and the Commission for the Parliament, lay down and submit to the power and authority of said Parliament and Commonwealth, as the same is now established, be exempted from pardon of life and estate.

7.—That all other person and persons (not being comprehended in any of the former qualifications) who have borne command in the war of Ireland against the Parliament of England, or their forces, as General, Lieutenant-General, Major-General, Commissary-General, Colonel, Governor of any garrison, castle, or fort, or who have been employed as Receiver-General or Treasurer of the whole nation, or any province thereof, Commissary-General of musters or provisions, Marshal-General, or Marshal of any province, Advocate to the army, Secretary to the Council of War, or to any general of the army, or of any the several provinces, in order to carrying on the war against the Parliament or their forces, *be banished* during the pleasure of the Commonwealth of England, and their estates forfeited and disposed of as followeth (viz.):—*That two-third parts of their respective estates be taken and disposed of for the use and benefit of the said Commonwealth, and that the other third part of the said respective estates, or other lands, to the proportion and value thereof (to be assigned in such places in Ireland as the Parliament, in order to the more effectual settlement of the peace of this nation, shall think fit to appoint for that purpose) be respectively had, taken, and enjoyed by the wives and children of the said persons respectively.*—(*Vide supra*, p. 50.)

8.—That the Deputy-General and Commissioners of Parliament have power to declare that such person or persons as they shall judge capable of the Parliamentary mercy (not being comprehended in any of the former qualifications) who have borne arms against the Parliament of England, or their forces, and have laid down arms, or, within 28 days after the publication hereof by the Deputy-General of Ireland and the Commissioners for the Parliament, shall lay down arms and submit to the power and authority of the said Parliament and Commonwealth, as the same is now established (by promising and engaging to be true to the same), shall be pardoned for their lives, but shall forfeit their estates to the said Commonwealth, to be disposed of as followeth (viz.):—*Two-third parts thereof in three equal parts to be divided for the use, benefit, and advantage of the said Commonwealth, and the other third part of the said respective estates, or other lands, to the proportion or value thereof (to be assigned in such places in Ireland as the Parliament, in order to the more effectual settlement of the peace of the nation, shall think fit to appoint for that purpose), be enjoyed by the said persons, their heirs and assigns respectively; provided, That in case the Deputy-General and Commissioners, or either of them, shall give cause to give any shorter time than 28 days unto any person or persons in arms, or any garrison, castle, or fort in hostility against the Parliament, and shall give notice to such person or persons in arms, or in any garrison,*

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castle, or fort, That all and every such person and persons who shall not, within such time as shall be set down in such notice, surrender such garrison, castle, or fort to the Parliament, and lay down arms, shall have no advantage of the time formerly limited in this qualification.

9.—That all and every person and persons who have resided in Ireland at any time from the 1st of October, 1641, to the 1st day of March, 1650, and have not been in actual service of the Parliament at any time from the 1st of August, 1649, to the said 1st of March, 1650, or have *not otherwise manifested their constant good affections to the interest of the Commonwealth of England* (the said persons not being comprehended in any of the former qualifications) shall forfeit their estates in Ireland to the said Commonwealth, to be disposed of as followeth (*viz.*):—*One third part thereof for the use, benefit, and advantage of the said Commonwealth, and the other two parts of their respective estates, or other lands, to the proportion or value thereof* (to be assigned in such places in Ireland as the Parliament, for the more effectual settlement of the peace of the nation, shall think fit to appoint for that purpose) be enjoyed by such person or persons, their heirs or assigns, respectively.—(*Vide* page 51.)

10.—That all and every person and persons (having no real estate in Ireland, nor personal estate to the value of ten pounds) that shall lay down arms, and submit to the power and authority of the Parliament by the time limited in the former qualification, and shall take and subscribe the engagement to be true and faithful to the Commonwealth of England, as the same is now established, within such time and in such manner as the Deputy-General and Commissioners for the Parliament shall appoint and direct such persons (not being excepted from pardon, nor adjudged for banishment by any of the former qualifications) shall be pardoned for life and estate, for any act or thing by them done in prosecution of the war.

11.—That all estates declared by the qualifications concerning rebels or delinquents in Ireland to be forfeited, shall be construed, adjudged, and taken, to all intents and purposes, to extend to the forfeitures of all estates tail, and also of all rights and titles thereunto which since the 5th and 20th of March, 1639, have been or shall be in such rebels or delinquents, or any other, in trust for them or any of them, or their or any of their uses, with all reversions and remainders thereupon, in any other person or persons whatsoever.

And also to the forfeiture of all estates limited, appointed, conveyed, settled, or vested in any person or persons declared by the said qualifications to be rebels or delinquents, with all reversions or remainders of such estates conveyed, vested, limited, declared, or appointed to any, the heirs, children, issues, or others of the blood, name, or kindred of such rebels or delinquents, with estate or estates, remainder or reversions, since the 25th of March, 1639, have been or shall be in such rebels or delinquents, or in

any their heirs, children, issues, or others of the blood, name, or kindred of such rebels or delinquents.

And to all estates granted, limited, appointed, or conveyed by any such rebels or delinquents unto any their heirs, children, issue, with all the reversion and remainders thereupon, in any other person of the same blood or kindred of such rebels or delinquents. Provided that this shall not extend to make void the estates of any English Protestants who have constantly adhered to the Parliament, which were by them purchased for valuable consideration before the 23rd day of October, 1641, or upon like valuable consideration mortgaged to them before this time, or to any person or persons in trust for them, for satisfaction of debts owing to them."

ADDENDUM.

SINCE the printing of the foregoing pages, changes have taken place at the Connaught Bar. In the month of June last, one of the leaders on our Circuit, Hugh Hyacinth O'Rorke MacDermot, D.L., Q.C., styled "The Macdermot, Prince of Coolavin," was appointed Solicitor-General for Ireland. As we speak not of living men, we shall not speak of him or of his career, however illustrious as a law student or as a lawyer; and shall merely remark that no appointment could have been made more acceptable to the Bar, and to those who look on learning in the law and unstained honour as conditions precedent to such an appointment. It must be a pleasure to every Irishman to see the chief of an old Celtic race—a race old amongst the oldest—achieve in his own land success such as the scions of Celtic races have often achieved abroad.

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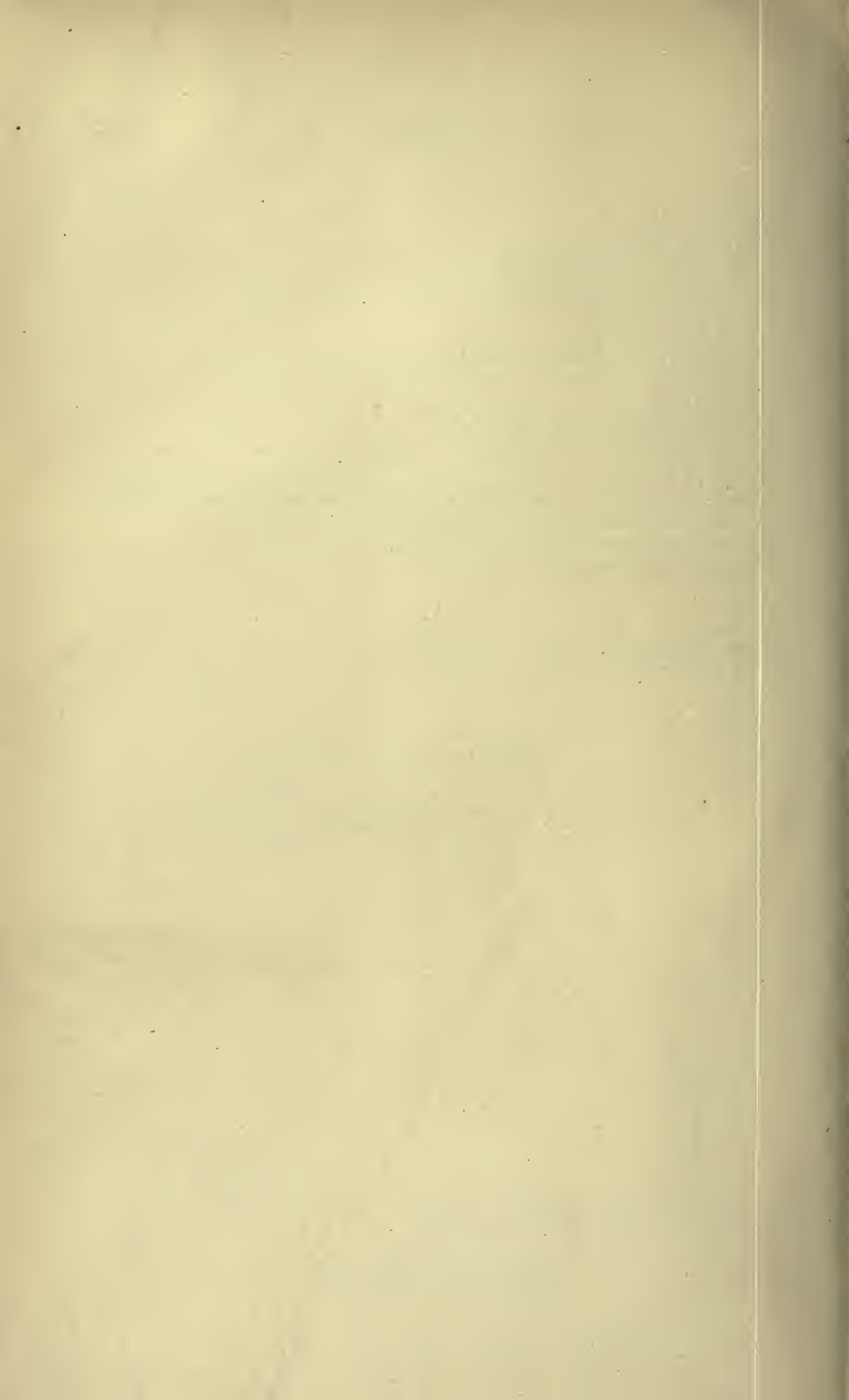
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